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AGRICULTURAL BARGAINING ISSUES FOR THE 1990's

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Preface

These proceedings are published by Agricultural Cooperative Service, U.S. Department of Agriculture, at the request of the bargaining and marketing cooperatives. This 34th National Bargaining Conference was combined with the Pacific Coast Bargaining Conference and held January 18-20, 1990, at San Diego, CA.

Proceedings include speeches delivered at the conference, association reports, and related information. Opinions expressed reflect views of participants. The proceedings should not be viewed as representing the policies of the U.S. Department of Agriculture. Use of commercial names does not constitute endorsement.

Copies of proceedings may be obtained in limited quantities from Agricultural Cooperative Service, P.O. Box 96576, Washington, DC 20090-6576.

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AGRICULTURAL FAIR PRACTICES ACT: IS IT TIME FOR CHANGE?

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Nearly 22 years have passed since the Agricultural Fair Practices Act of 1967 (AFPA) was signed into law by President Lyndon Johnson on April 16, 1968 (1). That legislative effort was designed to meet genuine needs of producers as they attempted to organize and negotiate contract terms with handlers.

The fact that this legislation is on the books is a credit to the perseverance of association and farm organization leaders who coalesced their interests and led the fight through final enactment. They were from diverse regional and commodity backgrounds (5) but found strength in their diversity and the fact that they could identify a common need. The legislative battle they waged was hard fought and subject to various torpedo attacks by processors. Growers ultimately prevailed, albeit with some amendments and language in the law that has proven debilitating in carrying out its full purpose. It was nevertheless recognized then as now as being "round one" in contemporary farm bargaining legislation.

The act reaffirms producers' rights to organize for marketing and bargaining purposes that was the subject of group action legislation nearly 50 years earlier.

The question I have been asked to discuss by your program committee is whether it is time for a change in this basic legislation. I want to address this from the perspective of what's in the law, court cases, and practical matters about handling these issues within the Department. These observations will lead us to consideration of alternative changes that might be considered in the Agricultural Fair Practices Act.

What's in the Law

The law contains six sections including title, legislative findings and declaration of policy, definitions, prohibited practices, disclaimer clause and enforcement.

A key part of the legislative findings is that because agricultural products are produced by numerous individual farmers, the marketing and bargaining position of those individual farmers will be adversely affected unless they are free to join voluntarily in cooperative organizations as authorized by law. Interference with this right of producers to organize is contrary to the public interest and adversely affects the free and orderly flow of goods in interstate and foreign commerce. The stated purpose of the act was therefore to establish standards of fair practices required of handlers in their dealings in agricultural products.

The definitions section provided definitions of a handler, producer, association of producers, person, and agricultural products. The term handler was amended in one section of the definition by Congress with encouragement of processors to apply to units "contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers." This language made the unfair practices that followed apply to associations of producers, as well as to processors whom the law was initially aimed, i.e., a two-way street. Also, cotton and tobacco were excluded from provisions of the act.

Prohibited practices identified in the Act were to:

1. coerce a producer to join, or refrain from joining, an association of producers, or refuse to deal with a producer because the producer joins such an association;

2. discriminate against a producer with respect to price, quantity, quality, or other terms of purchasing and handling agricultural products because the producer joins an association;

3. coerce a producer into signing, or breaching, a contract with an association or another handler;

4. pay or loan money to induce a producer not to join, or to cease belonging to, an association;

5. make false statements about the finances, management, or activities of an association; or

6. conspire with others to do any of the above.

This section made it unlawful for handlers to knowingly engage in these prohibited practices. It also made it unlawful for handlers' employees or agents to engage in such activities.

Section 5 of the unfair practices act is a disclaimer clause. Inclusion of this section almost caused proponents of the bill to drop their support of it. It provides that:

"Nothing in this Act...shall prevent handlers and producers from selecting their customers and suppliers for any reason other than a producers' membership in or contract with an association of producers, nor require a handler to deal with an association of producers."

As will be discussed later, this section has been repeatedly cited by processors in court litigation.

The enforcement section provides for enforcement by civil action initiated by either an aggrieved party or, upon the request of the Secretary of Agriculture, by the Attorney General. The penalty in a Government suit is limited to an injunction against further illegal conduct. In private litigation, the court may award damages to the plaintiff and attorney's fees to the prevailing party. The U.S. District Courts were identified as the proper jurisdiction for enforcement. It also specifies that the act shall not be construed to change or modify existing State law nor to deprive the proper State courts of jurisdiction.

Complaints Brought to Date

Passage of the Agricultural Fair Practices Act stimulated a number of complaints. These complaints were directed to Farmer Cooperative Service (FCS) from August 1968 until September 1970. It was this predecessor agency to Agricultural Cooperative Service to whom the Secretary first delegated responsibility for receiving complaints. Congress included about $21,000 in the FY 1970 Appropriation to carry out this responsibility. After 1970, responsibility for receiving complaints was redelegated to Agricultural Marketing Service (AMS), which carried on more regulatory functions whereas FCS carried out facilitating programs.

During the 1968-70 period, FCS received 14 complaints (4). Eight of these were considered substantial enough to request the Office of Inspector General, USDA to investigate the complaints. No violations were found in each of these

eight instances. FCS dismissed five complaints without referral, also on the basis that an investigation did not find grounds for action.

One complaint filed late during the FCS administrative period was in the dairy sector in Ohio. It was referred to the Department of Justice (DOJ) for prosecution and resulted in the Lawson Milk decision.

Nine additional complaints were filed with USDA between late 1970 and 1976. These cases were in the fruit, vegetable, milk, and poultry sectors. Six were dismissed by the Department when investigations found insufficient grounds for action. However, three cases were referred to the Department of Justice for prosecution. These cases were each settled when the processor agreed not to engage in any unfair practices in the future.

Three private lawsuits were filed during the 1970's. In each case, the court issued an initial order in favor of the producers and the case was settled.

The 1980's has been a relatively dormant period with only three known complaints filed with the Department. The first was in 1982 by Colorado sugarbeet growers. USDA referred the case to the Department of Justice for prosecution. The National Office of Justice referred it to the U.S. Attorney's office in Denver, where the request for action was rejected because the facts in the case were already before an appropriate court in private litigation. The second case was filed with AMS in 1987 on behalf of Washington sweet corn growers who alleged that they were discriminated against as members of Central Washington Farm Crops Association. The AMS Administrator saw lack of evidence to support a violation and dismissed the complaint.

The third complaint was filed in 1989 and is active. It results from a suit by Florida broiler growers who felt they were short weighted from 1980-88 by an integrator subsidiary of Cargill, Inc., called Paramont Poultry. The President of the Northeast Florida Broiler Association was terminated from his contract after the suit. The complaint was filed with the Atlanta office of Packers and Stockyards Administration (PSA) seeking reinstatement of the grower. After investigating, PSA alleges the president was terminated without good cause under the Packers and Stockyards Act of 1921 and the Agricultural Fair Practices Act of 1968. In its press release [1] on the case, the Department of Justice stated the suit represents its determination to protect the nation's farmers and ranchers from unfair business practices. The Wall Street Journal also recently did a front page story on the general status of contract growers in the poultry industry, including the Florida case.[2]

In summary, at least 26 complaints have been filed with USDA, but only six have resulted in any action in response to grower complaints. Handlers in five of the cases were reprimanded not to violate the Act in the future. The sixth one is still the subject of litigation. Complaints have originated both from producers of annual row crops as well as from the tree fruits, dairy, and poultry sectors. The initial burst of complaints has slowed to a trickle. Those successfully brought appear to be in association with other laws such as the Packers and Stockyards Act.

Case History Interpretation

Two pieces of information, beside an Act of Congress itself, set the tone for how well a law will hold up in subsequent tests and interpretations. One is the legislative history including accompanying House and Senate reports as well as floor discussion or colloquy on the issues covered by passage of the law that helps further define congressional intent. The second is case history developed through

[1]Department of Justice, "Justice Department Files Suit Against Poultry Processor," December 5, 1989.

[2]"The Broiler Business Consolidates, and That Is Bad News to Farmers" Wall Street Journal, January 4, 1990, p.l.

litigation that builds a record of court interpretations of the law.

Case history of (AFPA) up to this point has not been favorable to producer interests. While the 1974 decision in the case of Butz v. Lawson Milk pointed out that the overriding purpose of Congress in enacting (AFPA) was "to protect the individual producer...in his right to band together with other producers," the court concluded that the law emerged from its 4-year legislative battle "in its final form (as) a creature of conflicting intent and is, as a result, fraught with seemingly inconsistent and paradoxical provisions." [3] This latter statement is in specific reference to the disclaimer section of the bill interpreted as protecting "the handler's right to deal directly with the producer even though the producer in joining the cooperative may have assigned agency rights to the association for the sale of its (product)." [4] The court also went on to say "a handler could lawfully state in its marketing agreement that should the producer exercise his right to join a cooperative the handler will exercise its right not to deal with that association." [5] Thus it appears that while a processor under the law can't refuse to deal with a producer simply because the producer joins a bargaining association, once that producer signs an agreement with an association the processor can refuse to deal with the producer by refusing to deal with the association. This points out the weakness created in the law from producers' standpoint due to the disclaimer provision, and also the lack of any requirement in the law's provisions for the handler to bargain in good faith with the association.

The Michigan Canners and Freezers Association also challenged the validity of that State's bargaining law. The decision points out the two-way street provisions in the definitions section of AFPA that in essence defines agricultural bargaining associations as also "handlers" under the Act. Thus any restrictions on conduct of noncooperative processors and other buyers of farm products also apply to farmer-owned marketing and bargaining associations. The Michigan case also cited the "voluntariness" theme of the association, and invalidated sections of the State law requiring producers to pay fees to the association, and to be bound by association agreements even if they were nonmembers. [6] The Federal Act as written therefore conflicts with more advanced State farm bargaining statutes.

The Supreme Court decision in the Michigan case held that to the extent the Michigan law conflicted with AFPA, the Federal statute preempted the State law on agricultural bargaining.

Case history is also developing with regard to the Act through disputes among farm groups representing producers. This obviously was not an intended purpose of the Act when first passed. However, competition among groups representing producers can become intense. A case in point in the 1960's was the National Farmers Organization's (NFO) movement and attempts to sign members of various dairy and other cooperatives, to pack boards of directors with its own members, and in essence take over a number of smaller marketing cooperatives. Mid-America Dairymen of Springfield, MO, like other marketing organizations, challenged this effort. It used AFPA when it sued NFO for trying to sign and redirect milk of its producer members.[7] The intensity of NFO's militant organizational tactics and protest actions at the time were unsettling to many organizations and farm leaders. Mid-Am's case was one of several that challenged practices of NFO. In an ironic interpretation and twist of history, the court ruled that both organiza-

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[3] Butz v. Lawson Milk, Division of Consolidated Foods Corporation, 386F. Supp. 277, 234-235 (ND Ohio 1974).

[4] Ibid, p.237.

[5] Ibid, p.240.

[6] Michigan Canners and Freezers Association v. Agricultural Marketing and Bargaining Board, 467 US 461, 464-465 (1984).

[7] Alexander v. National Farmers Organization, March 1971.

tions in the heat of battle may have used inappropriate actions. In particular, it cited Mid-Am and other dairy cooperatives for coordinating their actions to meet the NFO challenge and suggested that they pay damages to NFO. The case is still not settled despite being initiated in 1971.

This points out that cases involving producer organization against producer organization seldom result in a clear cut winner and can result in unfavorable case history that can adversely affect all associations or cooperatives. Bargaining associations and cooperatives nevertheless have a responsibility to enforce their member agreements or risk losing status as an organization.

Alternative Changes in the Act

The complaint filing experience and case history developed through litigation clearly suggest the need for exploring improvements in the Act through amendments or through more advanced legislation modeled after State statutes such as those in California, Michigan, or Maine. It should be clear that use and application of the law is broader than just fruit and vegetables. Some of the more profound decisions have come from poultry and dairy cases. Indeed, as contracting becomes more pervasive with the adoption of new technology and integrated systems, it can be expected that there will be more opportunities for negotiated pricing over products and/or services rendered by producers. Changes that might be considered in AFPA legislation are therefore on the cutting edge of new marketing initiatives. They are a proactive means by which producers are attempting to shape their own operating environment rather than being passive bystanders and allowing other market channel participants to determine the rules.

The key attribute of AFPA is that it recognizes as a declaration of congressional policy that producers are disadvantaged due to being relatively large in number and small in size when dealing with buyers of their products (structural rationale), and because the biological production process and product characteristics (perishability) put them more at risk. The law is thus a reaffirmation of the value of group action that parallels the Capper-Volstead Act of 1922 passed 68 years ago.

AFPA is also valuable because it prohibits a number of practices that producers in a variety of commodity sectors have experienced when attempting to price their own products and other services. To some extent, it appears to have curtailed some of those practices (3).

Despite these attributes, some glaring weaknesses are in the law when examined against producer needs (2). These suggest the need for redress. Among these needs are as follows:

- repeal of the disclaimer clause;
- clarification of inconsistencies in AFPA and language in State laws;
- need to address complaints in a timely manner to provide producer relief;
- need for streamlined administrative and enforcement provisions with more teeth;
- affirmative language for parties to meet and negotiate terms in good faith;
- need for impasse resolving mechanism(s) that provide timely resolution;
- mechanism for processor collection of fees;
- coverage of aquaculture;
- consideration of mandatory fees or agency shop;
- establishment of a Federal advisory committee; and
- support for research and education that provides enlightenment about the bargaining process and improvements in it.

It may not be prudent to tackle all of these issues in one fell swoop, but there is growing frustration with AFPA as written and a growing perception that these

issues need to be tackled soon—that something must be done. Some proponents have even suggested as one alternative that amendments could be made a part of the 1991 farm bill.

Much of the present frustration centers on three aspects of the law. One is the inappropriateness of the disclaimer clause to the purpose of the act. Also, the language permitting handlers to refuse to do business with a producer for any reason other than membership in an association limits the law's effectiveness. Processors who wish to discourage association membership have demonstrated ability to find other reasons not to do business with selected association members. Secondly, there is concern over the preemption issue. Clarification is needed to resolve the inevitable conflicts between progressive State statutes and AFPA. Finally, there is concern over the administration, investigation, and enforcement of the Act. Two salient aspects of this final concern involve timely response to complaints and the deep pockets issue.

Since this latter concern is so critical, we should address the issue more fully. Producers subjected to discriminatory action by handlers are left in a precarious position. They can be left without a home (contract) for their crops, or with a reduced placement of chicks or even with an empty broiler or hog house.

Due to the capital intensity of production, they find themselves hard pressed to meet production bills and mortgage payments for commitments already made. Timeliness in investigating and settling complaints is therefore of the essence.

As now structured, two courses of action are available for relief. One is through the Department, and the second through private litigation. Litigation can be costly and raises the issue of deep pockets as well as timeliness. Most bargaining associations, like their members, operate on relatively thin budgets. The wherewithal to withstand lengthy court challenges is therefore a limiting factor on how far and how long a complainant is willing and can afford to go. Mid Am's litigation as an extreme example has been going on for 19 years. Consideration therefore has to be given to administrative relief. One attorney for bargaining associations claims that some past AMS administrator's didn't even know they had responsibility for the law. This issue is related to the fact that no appropriated funds have been earmarked by Congress for administering the act since FY 1970. It doesn't take much imagination to recognize that without financial support and recognition by the Secretary that there are problems to be dealt with, and the level of commitment within the Department will be rather low. The Department also has the problem of going through the Department of Justice to prosecute violations. These reasons may explain, in part, why fewer complaints have been brought to the Department.

Of equal importance is the fact that enforcement provisions are weak. A successful private litigator can realize damages and attorney's fees. The Government simply issues a restraining order to prevent further illegal conduct. In contrast, some recent State statutes provide for civil penalties that give some teeth to the legislation.

In addressing remedies to this problem, an alternative for consideration is to give the Department authority to issue civil penalties rather than going through another layer of bureaucracy in the Justice Department. This would allow the Department to apply and enforce the statute in a more expeditious manner and hopefully remove it from step child status under which it has been administered.

These three "corrections" to AFPA are of highest priority but should not detract from constructive building upon the law in other areas. Among these other areas are establishing recognition through good faith bargaining language, expanding the law to include aquaculture producers, and identification of workable dispute resolving mechanisms. Clearly, an amendment requiring good faith bargaining would have to be combined with repeal of AFPA disclaimer clause language saying that handlers don't have to deal with producer associations. Otherwise, the law would be flawed by self-contradiction, the exact conflict that exists now between States with good faith bargaining provisions and AFPA as written.

Dispute-resolving language initiated by Ralph Bunje in some bargaining association agreements with processors using the "reasonable price" concept provides for each party to name an arbitrator and use services of the American Arbitration Association (AAA). As another alternative, the California amendments passed in 1989 provide for the Director of Food and Agriculture to initiate a conciliation procedure through services of the AAA. Other States like Michigan and Maine have established arbitration procedures in the event that parties do not come to terms. Evidence suggests that such mechanisms have been helpful to all parties concerned in furthering negotiated settlements. The option(s) explored and settled on in national legislation need to have consensus support from the associations represented at this meeting. Much can be learned from earlier experience at both the State and National levels (6).

Summary

While a few might argue for repeal of AFPA in its entirety, it appears a better strategy is for producers to seek amendments to this law that will be more helpful in augmenting bargaining efforts. Amendments are often easier to achieve than totally new legislation.

A consensus appears to be building among associations to develop a vehicle that will permit growers to bargain in a better legal environment. As contracting increases, the need for effective bargaining will also increase. This approach appears to offer a number of growers valuable assistance in improving their incomes with minimal cost to the Government and with negligible impact on consumer food costs.

Several key officials in the Agriculture Department have had hands-on experience with State legislation. They are already well versed about producers' need for such legislation. The climate may therefore be apropos for aggressively pursuing changes that will facilitate the bargaining process in a way that improves producers' opportunities for just market rewards.

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STATUS OF COOPERATIVE BARGAINING FOR FRUITS AND VEGETABLES IN THE UNITED STATES

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This report presents preliminary results from a national survey of cooperative bargaining associations. The purpose of the survey is to provide a comprehensive and up-to-date description of cooperative bargaining in agriculture. The focus is on the economic and organizational characteristics of active fruit and vegetable bargaining associations and the grower-processor markets in which they operate.

This description is part of a larger study whose primary objective is to analyze the economic effectiveness of cooperative bargaining in agriculture. The study is being coordinated through the Center for Cooperatives at the University of California, Davis. Funding for the project is being provided by Agricultural Cooperative Service, USDA.

A small body of literature describing cooperative bargaining in agriculture already exists. One of the more important studies in this area was conducted by Helmberger and Hoos in 1965. In addition to providing a description of cooperative bargaining, Helmberger and Hoos developed a theoretical framework and empirically tested the ability of bargaining associations to affect raw product price. In 1975, a comprehensive survey of U.S. bargaining associations was conducted by Mahlon Lang. Many of the questions contained in Lang's survey instrument and in two other previously conducted surveys by Biggs (1978) and Skinner (1982) were used in the formulation of our own questionnaire.

Tables presented in this report provide the reader with preliminary results from our survey. A full discussion and complete analysis of the final results are forthcoming in the aforementioned larger study.

Characteristics of Responding Associations

We located 29 active fruit and vegetable bargaining associations in the United States and requested that they participate in our study by completing a written questionnaire. We also requested that each association forward copies of their bylaws and membership agreements, and a sample of their association's association-processor (or grower-processor) contracts. To date, 24 of the 29 associations have responded to our survey. Of these 24, 6 are multiple commodity associations (i.e., negotiate for more than one commodity) and 18 are single commodity associations. The individuals completing the questionnaire included presidents, vice presidents, directors, general managers, division managers, and assistant managers. Tables 1 to 6 provide information on characteristics of the U.S. fruit and vegetable bargaining associations participating in our study.

Location of Active Associations

Responses came from eight of the nine States in which active associations were located. The largest number of active associations were in California and Washington, and these States were most frequently represented in the survey with

10 and 7 responses, respectively. A complete distribution of responses by State is provided in Table 1.

Overall, the 24 responding associations represent 35 commodities, since 6 of the 24 associations negotiate for more than one crop. For the most part, operations/negotiations for individual crops in these multiple commodity associations take place separately. Thus, for purposes of this study, each of the 35 commodities will represent a separate bargaining association. Table 2 identifies the commodities for which the 35 responding associations bargain. Note that because some associations negotiate for the same type of commodity, the 35 associations represent only 24 different commodities.

Table 1—Location of active bargaining associations

State	Responding associations	Active associations located
	Number	
California	10	10
Idaho	2	2
Maine	1	1
Michigan	1	1
New York	0	1
Ohio	1	2
Oregon	1	1
Utah	1	1
Washington	7	10
Total	24	29

Table 2—Commodities for which the associations bargain

Annuals		Perennials	
Carrots	1	Apples	1
Cauliflower	1	Apricots	1
Chilipeppers	1	Asparagus	2
Corn	4	Avocados	1
Cucumbers	2	Cherries	1
Greenbeans	1	Hazelnuts	1
Peas	2	Limes	1
Potatoes	4	Olives	1
Tomatoes	2	Peaches (cling)	1
		Peaches (freestone)	1
		Pears	2
		Plums	1
		Prunes	1
		Raisins	1
		Raspberries	1
Total	18		17

Dates of Price Negotiations

Participating associations have been negotiating raw product price for an average of 24.9 years (for 34 of the 35 associations responding). Table 3 indicates the years in which associations began negotiating for raw product price.

The most frequently reported dates for beginning price negotiations are from the late 1960s to mid 1970s, during which time 18 of 34 responding associations began bargaining for price. This fact is not surprising given that the Agricultural Fair Practices Act (Federal legislation) passed in 1967 in response to producers complaint of discrimination because of their membership in or efforts to organize bargaining associations. Additionally, 9 of the 18 associations that began negotiations during this period were in California, where State legislation concerning unfair practices (1961) and later an amendment involving bargaining in good faith (1974) were passed.

Terms of Trade

Table 4 indicates the terms of trade for which associations negotiate. Noteworthy is that all 35 associations negotiate for raw product price and 34 of the 35 associations negotiate for terms of trade other than price. Thirty-two associations negotiate for time of payment and 28 negotiate for grading standards. Other terms of trade frequently bargained for include method of grading, duration of contract, and responsibilities and rights during production.

Twenty-eight of 34 responding associations have negotiated continuously with processors every year since the first year they began bargaining. Only six have experienced periods during which negotiations did not occur.

Membership

Table 5 shows membership in active associations. It is interesting to note

Table 3—Dates associations began negotiation raw product price

Date	Number of Responses
pre 1950	3
1953	2
1954	1
1956	1
1960	1
1961	1
1962	1
1963	1
1966	1
1967	4
1968	3
1970	2
1972	2
1973	1
1974	4
1975	2
1976	1
1979	1
1980	1
1987	1
Total	34

Note: Average number of years of price negotiations = 24.9 years

Table 4—Terms of trade for which associations bargain

Terms of trade	All associations	Annual associations	Perennial associations
		Number	
Price	35	18	17
Time and method of payment	32	18	14
Grading (quality) standards	28	15	13
Methods of grading	22	15	17
Duration of contract	21	10	11
Responsibilities and rights during production	21	15	6
Premiums and discounts	15	10	5
Transportation	14	8	6
Weighing procedures	14	9	5
Ownership and cost of seed	11	11	0
Provision of containers	11	5	6
Spraying and dusting	11	11	0
Raw product handling procedures	10	7	3
Quantity of product	9	2	7
Delivery and unloading schedules	7	4	3
Harvesting time	4	3	1
Planting Time	2	2	0
Irrigation equipment used	1	1	0
Other	5	5	0

Table 5—Total number of member growers

	All associations	Annual crop associations	Perennial crop associations
		Number	
Range of membership	6-2,140	6-1,275	82-2,140
Average membership	313	181	471
Total members	10,322	3,253	7,069
Number of associations reporting	33	18	15

that the range of membership, average membership, and total membership are greater for perennial crop associations than for annual crop associations.

Value of Bargained Crops

Tables 6a and 6b report the dollar value of bargained crops and the average dollar value of bargained crops per association for 1986, 1987, and 1988. Only 69 percent of all respondents reported the dollar value of the crops negotiated by their association. The response rate was 82 percent for perennials and 56 percent for annuals. This higher response rate for perennials versus annuals may reflect the fact that perennial crop associations are more likely to take title to their commodity and would therefore have this type of information available.

Market Conditions

Market control is a key determinant of success in bargaining, for both the associations and the processors with which the associations negotiate. Several questions in our survey, therefore, were designed to discern the extent of both association and processor market control.

Percent of Production Bargaining Through Associations

Respondents were asked to estimate the percent of total production in their geographic area bargained through their association, where total production is all member and nonmember production, which is sold only to noncooperative pro

Table 6a—Dollar value of bargained crops

	All crops	Annual crops	Perennial crops
		Million dollars	
1988	779.440	357.566	421.874
1987	686.503	313.798	370.705
1986	668.880	332.666	336.214
		Percent	
Response rate	69	56	82

Table 6b—Average dollar value of bargained crops per association

Year	All crops	Annual associations	Perennial associations
		Million dollars	
1988	32.477	35.757	30.134
1987	28.521	31.380	26.479
1986	27.870	33.267	24.015
		Percent	
Response rate	69	56	82

Table 7—Percent of total production negotiated by associations

Percent of total production	All associations	Annual crop association	Perennial crop associations
		Number	
Less than 25	1	0	1
25-49	8	2	6
50-74	12	7	5
75-100	8	5	3
Total responses	29	14	15

cessors in the market. Table 7 indicates the distribution of response. The average response, with 29 associations reporting, was 60.78 percent, although considerable variation in share is apparent in the table.

Presence of Processing Cooperatives

Though we are primarily concerned with the percentage of total production sold to noncooperative processors as an indication of associations' market share, the presence of processing cooperatives in bargaining associations' market areas (a marketing alternative for growers, and thus competition for associations) can be an important factor in associations' effectiveness.

Of the 35 associations responding, 16 have processing cooperatives in their market area that handle the commodity for which their association bargains. These processing cooperatives handle an estimated average of 41.7 percent of the commodity processed in the bargaining associations' market areas (15 of the 16 associations reporting).

Of the 16 associations with cooperative processors in their market area, 14 had association members belonging to at least one of these processing cooperatives. The average percentage of association members belonging to these processing cooperatives, with 12 of 14 associations reporting, is 25.05 percent.

One association reported that it did not allow its members to join processing cooperatives.

Buyer Concentration

Respondents were asked to estimate the percentage of their area's total output (member and nonmember production) purchased by the largest four processors. Table 8 provides these estimates. For the 30 associations responding, the average percentage of output purchased by the largest four processors is 75 percent. For 18 of the 30 reporting associations, the largest four firms purchase 75 percent or more of the areas production. For eight of these associations, the largest four processors purchase 100 percent of total production.

The numbers in table 8 suggest that the buying industries are indeed quite concentrated. It should be noted that in many cases the market areas for individual growers are smaller than those for an association. Therefore, individual growers may face even more concentrated buyers than those faced by the grower's association.

Table 8—Percentage of production purchased by four largest processors

Percent purchased by four largest processors	All associations	Annual crop associations	Perennial crop associations
		Number	
Less than 25	1	0	1
25-49	3	1	2
50-74	8	1	7
75-100	18	13	5
Total responses	30	15	15

Supply Management and Marketing Orders

Seven of the 35 responding associations report that for the commodity for which they bargain there exists either a State or Federal marketing order that controls quality or volume marketed. Three of 35 associations reported having attempted, at one time or another, to manage member supply.

Association Financing

Bargaining associations typically receive revenues from checkoffs, service charges to processors, annual dues, and membership fees. Many associations receive revenue from more than one source. Table 9 reports the specific break down.

Table 9—Methods of financing used by association

Methods of financing	All associations
	Number
Checkoff	24
Service charge to processors:	
flat fee per unit	12
percentage of value	2
Annual dues:	
per-acre basis	1
per-ton basis	7
Membership fees (one time fee)	3
Other	8
Total	57

Table 10—Persons responsible for negotiating

Persons responsible	Associations
	Number
General manager or executive secretary	21
● with a committee of grower members	12
● without a committee	9
Bargaining committees of grower members	6
Division heads	4
Board of directors	2
Association president	1
Vice president, operations	1
Total responding	35

Table 11—Arbitration

Associations	No	Yes
	Number	
With standard arbitration procedures	22	13
Settling negotiations by arbitration	24	7

Sixty-nine percent of all associations reporting (24 of 35) used checkoffs as a source of revenue. Seventeen of 35 associations used only one source of financing and 10 of these 17 used checkoffs. Other sources of financing reported by eight associations included income from such activities as the publication of a magazine, the administration of a State marketing order, and the selling of gift packs.

Negotiations

Respondents were asked several questions concerning their association's negotiation process. The responses are contained in tables 10 to 13.

Negotiators

Table 10 indicates the persons responsible for presenting the associatoins' position and carrying out negotiations in the bargaining process. Eighteen respondents reported that a committee rather than a single individual is responsible for carrying out negotiations. The single individual negotiators included nine general managers or executive directors, four division heads, one president, and one vice president of operations. No associations reported using hired negotiators.

A large majority of associations reported that the general manager or executive secretary negotiates for their association. More than half of these associations indicated that a committee of grower members accompanies the general manager during negotiations.

Person(s) Accepting/Rejecting Terms of Trade

Respondents were asked to specify who makes the final decision to accept or reject terms of trade in negotiations. Seventeen of the 35 associations reported that the board of directors makes the decision, nine indicated it was the responsibility of a bargaining committee, and two reported the decision is made by a general manager.

It is interesting to note that only seven of the respondents reported that the same committee or individual both carries out negotiations and accepts/rejects terms of trade. And for seven of the associations, it is the grower members themselves that make the final decision.

Arbitration

Table 11 reports that if bargaining does not result in an acceptable price by a specified time period or date, 13 associations (of 35 responding) have a standard method of arbitration and/or mediation. Table 11 also indicates that seven associations (of 31 responding) have, at one time or another, been settled by mediation or arbitration.

Failure to Reach Price Agreements

Respondents were also asked to indicate how many times since negotiations began their association has failed to agree on price terms of trade with processors. As table 12 indicates, instances of failure have been quite infrequent.

Processors' Refusal to Bargain

Participants were asked to indicate if the processors with whom they negotiate had ever refused to bargain. Fourteen of the 35 associations stated that processors had, at one time or another, refused to bargain.

Table 12—Disagreements on price negotiations

Number of price agreement failures	Number of respondentss
0	22
1-2	6
5-10	4
Total responding	32

Table 13a—Short-term alternatives if processors refuse to bargain

Short-run alternatives	All associations	Annual crop associations	Perennial crop associations
		Number	
Take legal action	21	10	11
Ship to fresh market	14	3	11
Rely on other local processors	12	3	9
Ship to out-of-area processors	7	1	6
Leave in field	6	0	6
Custom process	3	0	3
Other	11	8	3
Total respondents	33	17	16

Table 13b—Long-term alternatives if processors refuse to bargain

Long-run alternatives	All associations	Annual crop associations	Perennial crop associations
		Number	
Take legal action	17	10	7
Rely on other local processors	13	3	10
Ship to fresh market	11	2	9
Discontinue or reduce production	9	6	3
Ship to out-of-area processors	7	1	6
Custom process	6	0	6
Other	8	6	2
Total respondents	34	18	16

All respondents, including the 21 who indicated that processors had never refused to bargain, were asked to state which alternatives they might use, in the short term and the long term, if processors refused to negotiate. Short term refers to a period of time up to 1 year. Long term refers to a period longer than 1 year. See tables 13a and 13 b.

Table 14—Services provided to members in addition to bargaining

Services provided	All associations
	Number
Publish newsletters and newspaper	33
Legislative representation of growers	32
Collect and provide information	25
Fieldpersons (to check grading, organize harvesting, etc.)	17
Provide funds for research	13
Commodity programs	9
Other	9
Total respondents	35

Table 15—Processor benefits

Benefits	All associations	Annual associations	Perennial associations
		Number	
Increased price stability	31	14	17
Increased/improved information	31	15	16
Improved (less costly) price discovery process	25	11	14
Increased quality control-reduced product loss	15	12	3
Increased efficiency in handling of raw product	15	9	6
Quality and variety more in line with market demand	14	9	5
Quantity of raw produce more in line with demand	14	9	5
Field services	12	7	5
Other	12	5	7

Table 16—Nonmember benefits

Benefits	All associations	Annual crop associations	Perennial crop associations
		Number	
Price increases negotiated by association	35	18	17
Nonprice terms negotiated by association	26	14	12
Preferential treatment by handlers	4	3	1

Table 17—Objectives achieved

Objectives	Associations responding
	Number
More stable prices	31
Better/more market information	25
Higher prices	24
More uniform contracts	22
More favorable nonprice terms of trade	21
Assured markets	16
Expanded markets	15
Third party grading	10
Other	4
Total respondents	35

In both the short term and long term, the most frequently cited alternative was "to take legal action." Relying on local processors and shipping to the fresh market also were frequently cited as alternatives associations might take.

Respondents were asked if there were additional commodities (other than the crop for which their association bargains) members could produce without difficult transition. Twenty-one of the 34 associations responding indicated that there were no such alternative crops that could be produced by members. For the 13 associations that did indicate that alternative crops could be grown by members without difficult transition (eight annual crop associations, five perennial crop associations), eight mentioned some type of grain or seed crop as one such alternative—all of these eight associations were annual crop associations.

Benefits and Services Provided by Associations

Nonbargaining Services

Bargaining associations often provide grower-members with many services in addition to conducting negotiations. Table 14 presents the services provided by the surveyed associations.

Processor Benefits

There are several ways in which processors, as well as growers, can benefit from cooperative bargaining. Respondents were asked to give an opinion on how their processors have benefited from their association's bargaining activity. The breakdown of responses is provided in table 15.

The most frequently reported benefits include increased price stability, increased or improved information, and an improved (less costly) price discovery process. Other processor benefits reported include third party grading, support in "mutually" dealing with major problems facing the industry, fair and equal treatment of all processors, assistance on regulatory/legislative issues, assured supply, and protection from abuses by large growers or groups of growers.

Outsider (Nonmember) Benefits

One of the more difficult issues facing bargaining associations is the ability of nonmembers to benefit or gain from the association efforts. As table 16 shows, all 35 respondents indicated that nonmembers receive price increased attained by association members through bargaining.

Achievement of Objectives

Respondents were asked to specify, from the list in table 17, which objectives they feel their association has achieved. A large majority of respondents indicated they felt their associations had achieved both higher and more stable prices. However, noteworthy is that a greater number indicated success in price stability than in price enhancement. Better market information, more uniform contracts, and more favorable nonprice terms of trade were also reported as commonly achieved objectives.

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BARGAINING ASSOCIATION REPORTS

Richard LaFramboise
Central Washington Farm Crops Association

We cover the bargaining for corn, peas, baby lima beans, and carrots. Corn is our main crop. The State of Washington produces in the neighborhood of 30 percent of the Nation's freezer corn supply and a very, very small amount of canned corn supply.

I'll start with our association. We kind of had a wreck last year. The market was good. We were getting the price up, but we had a segment of our association who still wanted to get an even better price. They held out. The main processor in the area was Twin City Foods, a very large one. They decided that they were going to take their production elsewhere. And they did. And we moved the price from $55 a year before for corn to $62.50. We couldn't get it any further, and the growers in that particular area decided they would hold out and they had the membership to do that. They did and they lost. All of the production went elsewhere.

But outside that, it was a good year on the corn side. The pea side was good as well. The price was up. For carrots, the price was up. Everything went well in those particular crops.

Gene Bays
Apricot Producers of California

The 1989 crop season was quite successful in bargaining terms. Negotiations for 1989 were basically at the same rate as for the previous seasons. The crop was one of the larger ones since 1985. A subsidiary of APC known as Apricot Growers and Packers processed more than 7,000 tons in 1989, of which a substantial portion was packed for the USDA School Lunch Program. The overall USDA bid was for 259,925 - 6/10 cases. All in all, we have been pleased with our results in apricot bargaining during the past several years.

Rich Hudgins
California Canning Peach Association

I'll be giving the report for California Canning Peach and also California Freestone Peach Association.

First, the cling peach industry had a good year. Our association reached an agreement with canners on a commercial price of $218 a ton and some $5.25 over last year which represents the highest price we've ever negotiated. Our total production fell 3 percent during 1989. We delivered 478,000 tons to canners. Our yield fell roughly a ton to the acre primarily due to small fruit sizes.

Our pre-season estimate was for more than 500,000 tons. If we had sized the crop on the tree one more millimeter, we would have hit that pre-season estimate. We were faced with a year that had a record line of undersized small peaches. That meant that we were forced to greatly expand our juice delivery, our cull fruit

program. We had more than 300 growers, more than half our total membership who participated in the juice delivery program. We delivered more than 17,000 tons of juice fruit, which the association sold to eight different processors, including several canners in Mexico.

This year, juice volume surpassed last year's volume by more than 5,000 tons, resulting in grower payments in excess of $1.6 million by the association.

In looking ahead to 1990, we're watching the marketplace closely. We're assessing the impact of record levels of imports of canned peaches. More than 2.2 million cases came in this past year. Imports were running sharply higher the first 4 months of this marketing year.

We're also watching the acreage situation closely. We are seeing growers planting new acres, higher density. Projections are that acreage will continue to increase in the cling peach industry over the next several years.

Let's make a long story short. Both the grower and the canner made money in 1989, and we hope to do it again in 1990.

On the freestone side, in 1989 the total freestone processing volume amounted to about 100,000 tons. The freezing market is about 65 percent of that total. The association reached a price agreement with freezers of $165 a ton for the Gem variety peaches, which was up $5 a ton, and a $2 per ton price increase for Fay Elbertas. In the canning segment, which is about 20 percent of the total, we held the same price of $156 a ton that we had in 1988. In the dried segment of the market, about 15 percent of total processing, the price was $134 a ton, up $2 over last year.

The only other thing I would like to mention for freestones in 1989 is that we talked to the processors about creation of a processed freestone marketing order. We met some resistance from the processors. But those discussions did result in a working agreement between the association and the State's two leading freezers for promotion activities for frozen freestone peaches, with both the growers and the freezers contributing 50 cents per ton on their 1989 deliveries to raise in excess of $46,000 which is being used to promote frozen peaches. We believe this frozen market is a vast opportunity to explore and use some of these dollars to create additional demand for freestone peaches. We look forward to doing that in 1990.

Dave Zollinger
California Tomato Growers Association

California Tomato Growers Association is involved in one of the larger processing industries in the world. Tomatoes for processing are not only grown in the United States, they are grown in Canada, they're grown in Mexico, they are grown in the nations of the Mediterranean, they're grown in the nations of Asia, they're grown in South America, they're grown Taiwan, and they're grown in China.

California Tomato Growers Association represents slightly more than 50 percent of the California tonnage. California tonnage constituted nearly 90 percent of the U.S. production of the 1989 year at 816 million tons.

We had a very good year! Most of our members, except for those who were affected by an unfortunate September rain, had a profitable season. How good was it?

We had a $55.60 price, which yielded a total gross income of $478 million.

Tough times in 1987 caused acreage to drop to 214,000 acres. Yield increased markedly to 31.32 tons per acre, which attested to growers' gains in productivity, but unit value dropped to $46.40 and the industry thus only generated a

total gross grower income of $310 million.

Volume in 1988 ran pretty much the same as that of the 1987 season. We achieved an incremental increase in price over 1987. In 1989, we planted 270,000 acres in the State of California at a production of 32 tons per acre. This yielded final production of 8.6 million paid tons. As mentioned previously, the final average price worked out to $55.60. The quality incentive programs that are in place increased that price by 60 cents per ton, which enhanced grower returns by $5.2 million. In addition, improvement in late season premiums were also negotiated.

Nevertheless, we wound up with $478 million in gross income versus $315 million the previous year. Taking into account that about 500,000 tons of tomatoes were lost during the September rain, these final results are outstanding! It was indeed a very good year.

What about the 1990 year? We're in negotiations with processors at this time. I can report to you that things are looking well for the industry, and there will probably be a significant increase in acreage and tonnage again next year of California processing tomatoes. I can also report to you that California has three new processing facilities slated to come on line in 1990. Also, early indication is that at least one new plant is on the drawing board for 1991.

The processed tomato industry in the State of California is at this time very healthy, very vigorous, and a very dynamic industry. Growers in this past year have been able to recoup earlier losses. They have purchased new machinery, and are looking forward to a profitable decade ahead.

One other thing that happened during the year was related to the unfortunate occurrence in the processing apple industry associated with the food safety issue. Our processing tomato industry looked at that situation and decided we must become better prepared for a similar scenario. We created a unit to respond to that particular kind of crisis situation called the Processed Tomato Foundation. Some of you may know Pam Jones, who was formerly with Alliance of Food and Fiber. She has been hired to conduct the public relations, the research, and coordinate the Processed Tomato Foundation's activities.

Jean-Mari Peltier
California Pear Growers

The year 1989 was a great for California Pear Growers. Actually, though, if I have another year or two much like this one, I'm going to end up looking more like Gerry Marcus than I do now. We had a tough year of negotiations.

We signed up significant new memberships in the association, particularly among the packing houses, which I think helped strengthened our hand in negotiations.

Going into the negotiations, we were looking at production of an average size crop of about 290,000 tons. Actually, our State production was for 297,000 tons of Bartlett pears.

We had a lot of factors in the growers' favor as we entered negotiations, including the higher price that had been negotiated for canning peaches, and a significantly higher price than had been negotiated for canning pears in the Northwest.

It was interesting that Dick McFarland in the Northwest and I both came out and announced our opening price on the same day. He had everything wrapped up in a week. It took us another 5 weeks after the price had been established in the Northwest before we were finally able to convince our processors in California that the people in the Northwest knew what they were talking about. And so, successfully riding on their coattails, we also negotiated a canned pear price of $230 a

ton in California. That was up from $200 a ton in 1988, and the highest price ever negotiated for Bartlett pears in California.

I also would like to touch on a few of our other activities this year, particularly some of the things Richard Sexton mentioned about directions bargaining associations should look in terms of expansion of activity.

First in the area of regulatory work. The pear industry was part of the original 301 action that was brought against the European Economic Community at the first part of this decade, alleging that the Europeans were engaged in unfair trade practice by virtue of their illegal processing subsidies and export subsidies.

We thought the case had been settled in about 1984 when there was an agreement signed in which the Europeans agreed to start limiting processing subsidies on peaches, pears, and fruit cocktail. In fact, the opposite situation had occurred. Italian pear producers received $300 a ton for their fruit and processors only picked up the tab for $100 of that. The Government offset the other $200 a ton, which put us in a difficult position in trying to compete against that subsidized product.

Entering into this regulatory battle, I would have set our odds of success at about 20 percent in getting the Europeans to discontinue that subsidy. We were 100 percent successful. The Europeans have agreed to limit their subsidies and have agreed to a specific methodology by which the United States will annually review their subsidy program to make sure it's in compliance with world trade-weighted values. We believe that was a significant victory — not only for today but for the future — in terms of our competition from that large producer.

Dr. Sexton also mentioned free-riders. I know all of us have the problem of trying to develop additional services only to our members so that additional producers might be encouraged to join the association.

California Pear Growers has undertaken two new services in that regard. First, is we are now producing a Grower Notebook with the help of our field director, Kris Mapes, providing detailed cultural information to our growers on a regular basis, on research projects around the world in pears.

Our other activity concerns some problems with the reclassification of orchards crops under Worker's Compensation Insurance. We knew that those of us in California and elsewhere providing worker's compensation for orchard workers were going to be facing skyrocketing worker's compensation costs until we created our own "safety group." Most people had to wait for an expiration date on their insurance of January, but we've had a significant number of people switch to California Pear Growers Worker's Compensation Insurance program.

James S. Fraher
Atlantic Dairy Cooperative

We have had an active year in bargaining. For milk prices, as I am sure many of you are aware, we've had a strong market response, both in terms of an increase in demand and reductions in supply. And as a result, prices have reached record levels. We've also seen the largest seasonal increase in the history of the dairy industry in terms of milk prices. Prices are up right now about 35 percent in terms of the raw product cost from where they were back in the spring. That's attributable to the supply and demand situation.

A couple of unusual things occurred. We had an unexpected shortfall in production due to wet growing conditions in the Midwest and in the Northeast. We also saw the development of a large and largely unexpected commercial export market for nonfat dry powder, resulting in U.S. commercial exports of nonfat dry milk powder totaling about 375 million pounds. Continuation of strong

demand has resulted in basically eliminating surplus Government stocks of butter, cheese, and nonfat dry milk.

Butter is a problem. It's long in the market. In terms of our cooperative, we've had a particularly tight supply and demand situation in the Northeast. We were able to put in place, through negotiations with buyers and also with regulatory action in Pennsylvania, a premium over and above the minimum prices on milk that goes to the fresh fluid market of $1.05 per hundredweight. That represents about 8 percent of our total fluid price. That's been blended out on all farmer milk. For us in the Northeast it's really a change in our ability to negotiate premiums. If any of you have even a passing interest in the milk market, you know the Northeast is a highly fragmented market.

Cooperative market share for the Northeast totals about 50 percent. My market is stronger. In New England, it's also a little stronger. I'm south of there, in the Mid-Atlantic area. Basically, it takes a really tight supply and demand situation for the cheese processing industry to move us into this situation where we were able to negotiate premiums over and above the normal handling charges and the basic national Federal order prices.

We're looking for a continuation of tight market conditions in 1990 and a continuation of overorder premiums. Hopefully we're learning how to keep this success going. For dairy farmers on the whole, they're feeling pretty good about market conditions. But we're looking forward to a much more volatile and market driven dairy economy in the years ahead.

Bill Hanahan
Freemont Pickle and Tomato Growers Association

Our bargaining efforts this year were fairly successful. We were able to achieve about a $3-per-ton increase in price of tomatoes.

Our year was not really great for production, although on the average it was probably 95 percent of the whole crop. Some areas were hurt severely from time of planting right up to harvest and other areas had a pretty good year.

As we look to 1990, we're anticipating an increase in price of tomatoes, but we have not yet talked about that. That will be coming up later next week.

Another thing we are involved in is negotiating a second labor contract.

Michael Klein
Hazelnut Growers Bargaining Association

The Oregon hazelnut industry also encompasses a little bit of southwest Washington. We have a couple of orchards there.

First, the news we've all been waiting for since last year is that, despite a last-minute challenge from a species called the giant chinquapin, a relative of the chestnut, the hazelnut has been officially named as the State nut of Oregon.

The year 1989 was difficult for the hazelnut industry in Oregon and Southwest Washington. In 1988, we were faced with a 25-percent decrease in yield from 1987 on top of record crops in Turkey and Italy, which led to a 10-percent decrease in the field price at that time. In 1989, we expected and hoped to see a turnaround. The very worst things that could have happened, did. Mother Nature sent last February's arctic express with single-digit temperatures and high

winds into Oregon at the very peak of bloom. That froze the flowers right off the trees.

That led us to a crop of about 11,500 tons, down 25 percent from last year and down about 50 percent from 1987.

To make matters even worse, Turkey and Italy who produce more than 90 percent of the world crop had large carryovers that drove the market downward at the start of the season when they forecast record crops again for 1989. Let's put these numbers into perspective — a 5-year average of world production of hazelnuts prior to 1989 was about 450,000 tons. The 1989 crop, the world crop, was 660,000 tons, on top of 100,000 tons carried over from the 1988 crop. So, we're faced with a world hazelnut supply of 760,000 tons, compared with an average production year of about 450,000, a 67-percent increase over an average year.

Prices, of course, for Turkish hazelnuts fell at the beginning of the year to about a dollar per pound, down from $1.90 to $2.00 two years ago.

We were fortunate, in some respects, we were able to negotiate our kernel prices to about $1.70 per pound, which is 40-50 cents higher than Turkish products landed here in the United States. Even with this large differential in wholesale prices, our field price was seriously affected by the huge world supply and decreased to 38 cents per pound.

Things are looking better now and Turkey has pulled some 200,000 tons from the market to crush into oil, or at least they're saying they are going to do it. Turkey pulled another 50,000 tons from this year's crop for domestic nutrition programs and to feed its military, and bought up the remainder of the crop through the State cooperative and are holding it in a very strong position. Unfortunately, the government acted quite a bit late after the market had already reached the bottom, thereby allowing the manufacturers to stock up for the year.

We're hoping for a better season this year. Our trees look good. The market conditions show some positive aspects.

Jack Pressley
Malheur Potato Bargaining Association
Idaho Farm Bureau

Most of you in the Bargaining Association know I also bargain for the Idaho Farm Bureau for sweet corn in the Oregon area.

In potatoes, we had one of our longer negotiation seasons. We started out in early November of 1988 and thought we would reach an early settlement. The processors in Washington with a take it or leave it offer about December 15 and told them to take it or leave it by January 7. And they went out and got their acres on contract for potatoes, with the price down by 8 percent. So our job really came to a stop. The processors wouldn't even talk to us.

Finally, we got back to the table. We settled in April of 1989 with about an 8-percent increase in our price. We thought we did a really good job in the face of prices in our neighboring State going down. We met with them so many times, told them "no" so many times, that we had grower membership in our association who would back us up, and they had to keep coming back. So we settled. it was a good potato year. We had a good crop.

The amazing thing was that we started again in November of 1989 with our processors when the potato business was really short of potatoes. We met with them in November and we settled with both of our processors for 1990. It's the earliest settlement we've had in history. An 18-percent increase gave us a $5.00 potato in processing potatoes.

In our sweet corn product, we negotiated with two difference corn proces-

sors, one of them frozen and one of them canned. We got a $10-a-ton increase, which is about 18 percent, for the canning processor. We got that fast. But the frozen processor dragged his feet. He wouldn't match the other processor. In fact, we broke off negotiations. He tried to get acres from nonmember growers. Fortunately, we've got a good membership and he just couldn't get the acres. He tried to break our association. We're real proud that we held together, and he had to come back to us. We ended up getting our contract at just about the same price range of the other.

Noel Stuckman
Michigan Agricultural Cooperative Marketing Association

The Michigan Agricultural Cooperative Marketing Association, a Michigan Farm Bureau affiliate commonly known as MACMA, is a statewide multi-commodity marketing and bargaining association. We operate through divisions. Each of our divisions has a body of membership. Division members annually elect marketing committees. A manager works with each committee.

We're also the largest marketer of feeder pigs in Michigan and have a direct marketing division that annually sells several million dollars worth of food products to Farm Bureau members through county Farm Bureaus in Michigan and about 15 other States.

Michigan has a State farm bargaining law, PA 344, the Michigan Agricultural Marketing and Bargaining Act. We've had PA 344 since 1973 and the administrator, Lee Gonzales, is present.

MACMA has four fruit and vegetables divisions in operation. The Asparagus Division is accredited under our State Farm Bargaining Law. The committee was able to establish a 57-cents-per-pound price on the 1989 crop, the same as for 1988. The committee started out asking for a slight price increase and had difficult negotiations, primarily arising from the canners. We went into arbitration with one of the larger canners, in which we were successful in getting the arbitrator to agree to our position and it all ended up with the same price, grade standards, and payment payment terms as the previous year.

The Asparagus Division represents more than 80 percent of the production in the State, and, in fact, enjoys strong grower support because the division did not have one single cancellation during the annual cancellation period. The division operates a Statewide program for advertising, promotion, and research which is funded by a State Marketing Order.

Processing apples is another division accredited under our State Farm Bargaining Law. The Apple Division represents more than two-thirds of the production of apples used for canning, freezing, and juice. We're not involved in the fresh market. The committee established prices in 1989 without arbitration. Prices were slightly lower than the 1988 crop, which reflected the large crop of apples in Michigan, Washington, and New York in 1989. The Appalachian area had a short crop. There was good demand for processing apples out of Michigan and New York to satisfy canner demands in the Appalachian area, the only positive point we had to deal with in marketing the 1989 crop. The fresh market has been oversupplied right from the outset, due primarily to a large crop of apples in Washington, and of course the carryover effect of the Alar situation reduced demand.

We had an oversupply of juice apples in the State, caused by an early October freeze and followed by another freeze about 10 days later. We were successful in getting USDA to make an additional large purchase of apple juice, which should use all available juice apples.

We are involved in the American Ag Marketing Association Processing Apple Program. That's an affiliate of the American Farm Bureau. We have operating responsibilities. That program involves all of the Eastern apple producing States. It is one of multistate coordination and price discovery.

Red Tart Cherry Division activity is primarily in price leadership. Michigan is the largest producer of red tart cherries in the Nation, with about 70 percent of the production. Our committee last summer prior to harvest recommended a price of 25 cents a pound for raw product, which would reflect a 50-cent-a-pound price for frozen cherries. A lot of our cherries are processed into frozen cherries and then sold on to institutional users throughout the year. The final grower price for the year doesn't look good, because frozen prices have dropped considerably from the high 40s down to the low 30s.

The red tart cherry industry has chronic oversupply from too many trees. We're looking at what tool to use to reduce the number of trees, to manage supply, and discover price. We're looking at a new Federal Marketing Order for short-run supply management. A tree removal program, similar to the Federal dairy herd buyout but not under State or Federal Government, is being considered. We're looking at the use of PA 344 for price discovery, maybe on raw product, maybe on frozen. We're looking at the concept of a "super co-op" to establish frozen cherry prices on a year-around basis.

The Plum Division is primarily a price leadership activity. The committee asked for 8 cents a pound, ended up with 5 to 6 cents being paid by the canners. We were successful in getting USDA to purchase canned plums. We operate the Michigan Plum Advisory Board Program for promotion, advertising, and research.

Marvin Jarmin
Northwest Red Raspberry Growers Association

In 1989, we changed our name from Washington Red Raspberry Growers Association to Northwest Red Raspberry Growers Association. This title is more descriptive of the three areas that grow commercial raspberries in North America. British Columbia has 6,000 acres; Washington, 5,000 acres; and Oregon, 4,500 acres.

Three critical times in raspberry production influence yield and price — winter injury, rain during bloom time, and rain during harvest time. In February 1989, warm spring temperatures in the 50s changed to the low teens with 100-mile-per-hour winds.

With anticipated severe winter injury, buyers moved ahead to line up raspberry product direct from growers, and cold storage holdings moved out.

The field price per pound moved up 5 cents above the 1988 price to 51 cents per pound for berries in 400-pound drums. Hand-picked price increased by 10 cents, from 55 cents to 65 cents per pound.

Growers continue to plant raspberries, and cold storage holdings are starting to build up. World production is increasing. Although the 1989 season was a good year for the growers, we may have some marketing problems in the 1990 season.

Paul Slade
Ohio Agricultural Marketing Association

Like MACMA, we are affiliated with Ohio Farm Bureau Federation, the largest farm organization in Ohio, with 115,000 family farm members. We are funded by the organization so we have many different activities in marketing. Processing tomatoes is the one we've worked with for a long time, but to keep a viable active organization we're working in many other areas.

We have contracts with many other associations providing different management functions, and work closely with the Freemont Pickle and Tomato Growers Association. We're working now to put together the old Hunt Growers Association to try to get them back in a bargaining mode.

We have contracts with Ohio Vegetable and Potato Growers Association and Ohio Fruit Growers Society, providing management, secretarial, and office services. The Ohio Fruit Growers Society is involved in contracts to do apple promotion checkoff work in the State of Ohio. We have a contract to provide management services to Ohio Soybean Association.

One of our newer activities concerned deregulation of natural gas. We have a large greenhouse industry in Ohio — Cleveland, Toledo, Cincinnati areas. It was mainly fresh market tomatoes. Because of Florida and Mexican tomato competition with greenhouses, we have gotten into flowers, hanging baskets, and fresh cucumbers. We buy gas on the spot market and buy the transportation to bring it up from the Gulf Coast and sell it to the greenhouses at a substantial saving over what they had to pay for natural gas. For example, one large greenhouse grower saved about $30,000 on his greenhouse fuel bill.

We have about 200 Farm Markets organized into cooperatives buying a large variety of different products, from popcorn to maple syrup for their markets. By buying in large quantities at discounts, the savings can be passed on to the Farm Markets of Ohio members.

The fifth largest cash crop in Ohio is tobacco. We have a contract with R. J. Reynolds Tobacco Company, which allows us to put a person to work closely with these growers and carry out a lot of legislative activities. We were successful in fighting back 12 cents in sales tax on cigarettes last year.

We work closely with labor activities. We have a consulting service for workmen's compensation and also unemployment insurance for our members. This service is a contract with an affiliate of the Nationwide Insurance Company. Nationwide is an organization started some years ago by Farm Bureau people, who still have a good relationship.

Adin Hester
Olive Growers Council

During the time of the Spanish missionaries, San Diego was the gateway to the California territory. As they moved up the coastline building missions, they planted olive trees. That was the beginning of the State's olive industry.

Let me give to those of you who are new to this conference a brief overview of the olive industry. California is the only commercial olive-producing State in the Nation. We have roughly 34,000 acres. That includes both producing and nonproducing acreage.

To give you a benchmark in terms of world supply, we have Spain with 5-1/2 million acres, Italy with 2-1/2 million, Morocco with 1 million, and several other smaller countries with substantial amounts of olive acreage that exceed California's.

The year 1989 was a good for the California olive industry. We produced the third largest crop in our history, 119,000 tons. I'm sure that doesn't sound like a lot of tonnage when you compare it to tomatoes, pears, or some of the other crops, but you need to consider the size of the little rascals and you have to pick them all by hand.

We were fortunate in our bargaining activities this year to increase our prices. Of course, our original estimate was that our crop was going to be 100,000 tons. It actually ended up 34 percent across the board to the growers. One of the reasons for that nice increase in tonnage was thanks to Mother Nature and silent prayers for a little rain that some of you were not too happy with in September. It has a tendency in olives to increase our size, which adds about 10 percent weight, because olives are an evergreen tree and they are able to take up nitrogen out of the air through the leaves and put it into the fruit. It's a wonderful phenomenon.

Another thing we're working with now with our industry, particularly with our bargaining association, is what we call our grower pool. These are growers who have made no contractual obligation to any processor. What we simply do with that tonnage is shop the independent processor sector, and offer them tonnage if they're interested. If they're hungry enough and are willing to pay a little extra money, we're very willing to accept it.

You may wonder what that does with regard to California law concerning favored treatment of one grower over another. We class that as a service fee paid through the bargaining association. After those funds are given to the Council, how we distribute them is at the direction of our board. And, of course, what we do is distribute them back to the grower. But the interesting thing it has done is cause some of our processors now to put out a post-season payment they call the participation payment. So, a year later, if they were profitable in their operations, they will repay some money to the grower. Unfortunately, the grower has no way of knowing what the amount will be. We haven't determined yet how they figure out what that profit-sharing is, because we have no way of auditing their books and they don't establish any kind of pre-determined value, but at least they give a few dollars back to the grower. From that standpoint, we think that it is good for the industry.

As far as our Council is concerned, looking down the road, I think we're faced with some of the same problems that many of the rest of you are. We have free-riders in our industry. We are concerned about the imports. They've gone from zero in 1981 to 25 percent of our market today. That concerns us gravely. We are also faced with water pollution issues and chemical problems, although we are smaller users compared with other crops. Labor is a continuing concern because olives are all handpicked.

Our candid opinion is that despite the problems we face, the long-term economics look good for the olive grower. As with any commodity, so long as there is pricing leadership, growers will have an opportunity to provide input regarding price of the olives and terms of contract.

Bob Knight
Ontario Vegetable Growers' Marketing Board

We do have final-offer selection and binding arbitration in our negotiations. We do negotiate 12 commodities. I'll only report on four of our major commodities. First is cut wax beans. In 1989, we had two contracts on wax beans. On the cut bean contract, we got a 5-percent price increase. On the whole bean contract, we got 25-percent increase. That was the negotiated settlement. Peas, we ended up with a plus 14 percent. That went to arbitration. The processors' final offer

position was plus 7, the growers' position was plus 14, and the arbitration was awarded to the growers, so we did get 14-percent increase in the prices.

Sweet corn was again another commodity that went to arbitration. Processors' final offer was plus 8 percent. Growers' final offer was plus 10, and that was awarded to the processors in this particular case. Our price in 1988 was $81 per ton.

Tomatoes, another significant crop for our marketing board, representing about 60 percent of the total farm product values, went to arbitration. The processors' position was plus seven, the growers' position was plus nine and three-quarters, and the award went to the processors.

It was a difficult growing year, similar to Ohio and Michigan. We had a wet season at the start of our planting that delayed a lot of plantings. Dave Zollinger said the California Tomato Growers experienced rain. We experienced significant rain on July 20. One area received 15 inches of rain overnight.

Needless to say, the producers in that particular growing area have lost a total year of production. We had tomato fields that were submerged in 3 feet of water. Yet, 30 miles away, we had banner yields. We had producers that achieved 33 and 35 tons.

Overall, the canners got most of their pack. With tomatoes, I think we ended up with about 95 percent of the pack. Peas and sweet corn were down a bit, but the rest of the crops were there.

In looking forward to this year, we see perhaps a downward pressure on our prices. When we negotiate, we take into consideration the duty because of the Canadian/American Free Trade agreement, our duties are coming down as part of one of the tools we negotiate with. And the exchange is made with American dollars.

Hopefully, we can hold a line but I think we're going to have some downward pressures.

Greg Thompson
Prune Bargaining Association

A large crop is not always the best crop in prunes. One thing we're trying to do in the industry is to get growers to grow larger prunes. In the past 3 years, we've seen some very large crops and generally the large crop is small prunes.

In price negotiations this past year, we felt fortunate, and I think PBA has really established itself in the industry as the pricing mechanism. We were able to settle the price before harvest and we moved prices up to a level that surprised a number of people in the industry. In fact, the cooperative committed some sales at a lower price than it would have if it had realized what we were going to achieve.

I really think this success is due in large part to the credibility that PBA has built up over the past 10 years. That's really the summary for 1989.

In 1990, it's going to be a very interesting and challenging year for us. We're looking at a large carry-in, much as we had this year, or perhaps even larger. If we have another large crop, we'll have our work cut out for us

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Thelma Moses
Vegetable Bargaining Association of California

This year's corn nut negotiations have finished. The prices are about the same as last year. However, the acreage has decreased. Corn Nut, Inc., is moving a great of deal of its acreage in the San Joaquin Valley to the Ohio Valley. So, we're losing some acreage there.

We anticipate the cucumber processors will be wanting about a 10-percent increase in acreage this year which is good news for the growers. As the price climbs, it looks like it will be pretty favorable. So, we should start negotiating for that particular commodity pretty soon.

Our largest and probably most difficult commodity to bargain is chili peppers. We'll be starting immediately. There probably will be a slight acreage increase this year. Chances are that we will see a slight price increase as well, at least that's what we're hoping.

This last year, we had adequate labor, though the prices were a little higher. So, we're hoping that this trend of adequate labor will continue, although that may create a little higher prices than what we usually see.

Overall, the prices in the Salinas Valley are pretty good. We're looking at some favorable conditions there. However, the fall rains did some damage to us as well. The grape industry, as you know, is a growing industry and was in the middle of harvest at that time in Monterey County. Dry beans were hurt by those rains as well. With the possibility of another dry year for us, we are looking at some serious problems with overdraft, and saltwater intrusion at the coast.

Mike Harker
Washington Asparagus Growers Association

I've been with the Asparagus Growers Association for a full year now. We are right now in the midst of our negotiation process for 1990 product prices. It's pleasant to have 1 year of experience under my belt. But, I'm looking for one of those—what was the word I heard a little earlier, windfalls or some such thing. We're still waiting for that. We're down in the trenches again this year.

I think our organization has made substantial progress over the past year and a half or so in terms of stabilizing our own financial capabilities, and reestablishing some relationships with processors that have waned. We also have added a new processor of asparagus in the Northwest this year that our bargaining association will be working with. So, I think we've got some reason for optimism. We've grown in numbers slightly over the past year and obviously that adds to our ability to bargain.

I appreciate the comments of the speakers this morning. While I think the boards and managers of bargaining associations often feel their challenges are unique, it is useful to get together and discuss our many common interests, needs, concerns, and opportunities.

Larry Jorgensen
Washington Potato Growers Association

We really didn't have any meaningful negotiations in 1989. If Dick says he had a wreck, we had a mess. Lamb Weston, now owned by ConAgra, a large agricultural conglomerate, presented us with a no-negotiation proposal just before Christmas and handed it to us and said, "Merry Christmas."

The interesting part about the proposal and I guess it's one of the things you have to watch when you're in growers' associations is that only one word changed in the contract. "The signed provision of the contract reads that the minimum size of potatoes shall be 2 inches or 4 ounces. The processor changed "or" to "and," saying it was only going to mean a 3- or 4-percent reduction. We had our concerns. We thought it was going to be more. We ended up with about a 12-percent reduction in the contract price. All this in the year when prices were going up and we were anticipating significant increases.

Dick McFarland
Washington-Oregon Canning Pear Association

Bartlett pears in Oregon and Washington were one of the bright spots in the Northwest tree fruit industry this year. We received the highest price we've ever received, $230 a ton for No. 1 Bartletts. We received this price with less negotiating than we had ever done. Needless to say, economic factors were good and firmly in place, such as inventories, f.o.b. prices, competing fruits, etc. And when the processors finally determined that the optional fresh market was going to reduce the volume of their scheduled pack, they came to us and offered us a fair price.

Vaughn Koligian
Raisin Bargaining Association

The Raisin Bargaining Association (RBA) is a 2,200-member cooperative within a 5,500-member industry in the San Joaquin Valley.

There are 18 signatory packers of the 23 packers that are members of the association. RBA had a good year last year. We signed up about 79 new growers representing about 12,000 additional tons. In fact, while the directors are here, I can tell you that we signed up an additional 1,200 tons just yesterday from one grower. So, we're doing well. Public response has been good toward RBA.

This last year, we successfully negotiated a price that was a 7.5-percent increase over the prior year. Last year, 1988, the base price was $966 a ton. With bonuses and other incentives, you might have received somewhere in the range of $1,025 to $1,050. This year, our base was $1,040 a ton and with those bonuses and incentives, you would be somewhere in the range of $1,100 to perhaps $1,150. So, I think RBA did its job this year for raisin growers.

I have to spend a moment to tell you about some of the obstacles that confronted us along the way. It seemed like everything happened in a series of threes. It took three attempts for us to get a master contract signed. The final document was not 100 percent acceptable to growers and packers, but it was an acceptable compromise and we had to go forward. After all, we are a bargaining association

and compromise is part of the rule.

The second thing that affected us was the untimely rains that hit us from the latter part of September and October. Adin Hester, the rains may have helped you but they caused total chaos in the raisin industry. We were right in the middle of our bargaining process. It put us in turmoil. RBA basically has two pricing periods where we make offers. The first rain came right as we made our initial offer. In the past, when we had three rains like that, we'd lose a large portion of the crop. Well, this year, we had strong grapes and we have improved reconditioning techniques. So, we probably only lost 15 to 20 percent of the crop.

Last year's crop was the largest year in raisin history, including the diversion program of 1988. In that year, we produced about 379,000 tons. This year, if there had been no rain, there is no doubt in my mind that we would have had 450,000 to 475,000 tons. With a 100,000-ton increase, basically it overloaded the supply situation domestically, and we were headed for trouble.

Fortunately, the crop was aborted to a degree by the rains and it looks like we'll end up somewhere in the range of about 395,000 tons. So, even after the rains, we still had the largest crop in raisin history.

Another thing happened in threes. We had three price offers this year. The first one influenced by rain. The second one influenced by trying to recapture increased costs for growers and the additional cost for reconditioning. The third price offer was basically in a range consistent with our large production. And this third offer was slightly modified and accepted prior to arbitration. We were headed for arbitration, in fact we were certainly the furthest along we had ever been in raisin history. So, that was avoided with a compromise that allowed the industry to charge forward and get the sales going again.

The fourth series of three that happened this year was having three managers in one year. To my board who are here today, I don't know if I were the last choice, or if the board saved the best for last. I hope that it's the latter and only time will tell.

Labor is one of the key issues affecting the raisin industry right now. For a 3-week period, we need an additional labor force of 55,000 growers. That's tough. We've seen a transition of growers that we usually depend on moving off to major metropolitan areas working in restaurants, hotels, and other jobs like that. So, RBA is continually working on labor programs to assist us in the industry. Labor's a problem.

By the way, a shortage of labor this year caused a lot of growers to pick later than normal—later pick, more exposure to rains. So, that's a problem as well.

As I said, production was the largest crop in history. What this has done is that we've negotiated for what are considered free-tonnage raisins. In the past, the trend was to have a large amount of reserve raisins in the growers' hands and a small reserve in the packers' hands. That's not going to happen this next year. We will go into the 1990 crop year, and if sales continue the way they have, with an increased amount of carry-in tonnage in the packers' hands, and a decreased amount of tonnage in reserve under growers' control. This increased carry-in tonnage can result because of declining sales and will cause our free tonnage to decrease in the 1990 crop year. And remember, free tonnage is what you get your premium price for. So, I think the grower in 1990, if it's a normal crop, will be looking at a lower free tonnage percentage.

I might add that right now we are a strong industry, but we're in a critical period. This large crop of carry-in tonnage is a concern to all leaders in the industry.

I am pleased with what is happening in exports. The raisin industry has been aggressive in keeping the export program alive. There has been a slight change recently. I see it only helping us. There is a lot of incentives for export, and things are going well. Domestic sales are down 8 percent.

This year, we were handicapped by a raisin price announced early by one or two processors who competed with RBA's purpose to be a leader in setting price.

This caused a number of winery growers to make raisins this year who have never made raisins in the past. This added to our production problem. Many table grape growers also switched to raising raisins, because the Thompson grape industry did not do well in the past couple of years.

Imports are a problem. Chile and Mexico are increasing production, with cheaper raisins and even cheaper labor. I see the solution to our industry in areas of new product development and new research. RBA will have to lead the industry on behalf of the growers, the packers, and the final recipients of products will all have to work together on new product research and new means of marketing the product.

If the dancing raisins aren't working, we've got to be there with solutions to finding increased consumption in the United States. It's a tragedy that in the United States we consume only about 2 pounds of raisins and we produce all of it right here. In England, consumption is about 10 pounds of raisins per capita, and West Germany about 6 pounds. We need to increase our domestic consumption of raisins.

The final key to the success of our industry is improved communications between growers and packers. We are two different entities with the same problem. And the only way we can solve that problem is to work together.

I would like to say in front of all of you that I am pleased the RBA board members have worked well this year. Internal strife and external obstacles faced us. But, I can tell you that we weathered the storms well, and I am pleased to be their manager.

I have a saying in my office, "We can work out our problems if we work it out together." And that's what took place this year in RBA.

THE URUGUAY ROUND AND THREAT OF BILATERALISM

Mike Stuart, Senior Vice President
Western Growers Association

Several issues are affecting the international flow of agricultural products around the world. And, specifically, I would like to bring you up to date on:

1. What's happening in the Uruguay round of multilateral trade negotiations underway in Geneva, Switzerland;

2. The status of some bilateral discussions the United States is having with other countries, particularly Mexico; and

3. How the whole issue of food safety is affecting international trade of agricultural products.

That's not an easy assignment in the 20 minutes. But I'll do my best, which sometimes comes back to haunt me.

The first thing I would like to point out, if you don't know it already, is that the Uruguay round in itself is a misnomer. The negotiations don't take place in Uruguay. They take place in Geneva. The initial meeting of the trade ministers took place in Punta Del Este, Uruguay, and it was subsequently dubbed the Uruguay Round.

This is the eighth time members of the General Agreement on Tariffs and Trade, or GATT, have conducted a series of multilateral trade negotiations since its inception in 1948. Previous negotiations have been called the Geneva Round, Anacee Round, Torque Round, Dillon Round, Kennedy Round, and Tokyo Round.

But there is more that's unusual to this negotiating round than just its name. For the first time, agriculture is the primary focus of the multilateral negotiations. Even more unusual, when the new round was launched on September 20, 1986, the trade ministers agreed discussions on agriculture would not focus on the traditional request and offer procedure on tariffs and nontariff barriers that has been the case in previous negotiations.

Instead, they agreed negotiations should be targeted at achieving greater liberalization of trade, and that all measures affecting import access and export competition should be brought under a strengthened and more operationally efficient set of rules and disciplines.

Specifically, the ministers wanted to:

First, improve market access through the reduction of import barriers;

Second, improve the competitive environment by reducing the impact of direct and indirect subsidies on agricultural trade; and

Third, minimize the adverse effects that sanitary and phytosanitary regulations have on trade in agriculture.

Today, more than 3 years after the start of this negotiating round, most observers will tell you that progress has been painfully slow.

Basically, the world has divided itself into several camps, each of which has submitted its own proposals on how the goals of the negotiations should be accomplished.

The United States was the first country out of the gate and its proposal was by far the most far reaching in scope. Originally, the U.S. had called for the elimi-

nation of all trade distorting subsidies and other measures that affect trade over a specific time period. Over the past 18 to 24 months, that position has been revised to call for "substantial progressive reductions" in subsidies and nontariff barriers.

Just last fall, the United States tabled its most detailed proposal to date.

Basically, it calls for the removal of all nontariff barriers and their replacement with tariffs that would eventually be lowered to zero or very low levels—in the trade jargon, this has been called tariffication. Others have called it just plain terrifying.

The plan also calls for a snapback provision that would protect countries against surges in imports. Snapback provisions have become commonplace in agreements such as the U.S./Israeli FTA, CBI, and U.S./Canada FTA.

The third aspect of the plan is its three-tiered approach to Government domestic support programs.

Under the proposal, policies to be phased out include:

— Administered price policies;
— Income support policies linked to production or marketing;
— Any input subsidy that is not provided to producers and processors on an equal basis; and
— Certain marketing programs, such as transportation subsidies.

Permitted policies would include:

— Income support policies not linked to production;
— Environmental and conservation programs;
— Bona fide disaster assistance and food aid programs;
— Certain marketing programs, such as promotion, inspection, and grading;
— General services, like research and extension.

A coalition of countries called the Cairns Group has submitted proposals similar to, although more conservative than that of, the United States.

The Cairns Group is composed of so-called free traders such as Australia, New Zealand, and Canada. The Europeans and the Japanese have submitted proposals that basically protect their existing programs based on their food security concerns. Their reaction to U.S. proposals has been less than positive.

By and large, reaction by domestic agricultural groups to the U.S. proposal to eliminate subsidies has been largely supportive, perhaps because they probably don't feel the U.S. will prevail in the negotiations. Therefore, they can support the Administration, which is a good political move, and at the same time not worry about losing their programs or protection.

The Uruguay Round is scheduled for completion in late 1990. As the end of the negotiations nears, the true positions of many agricultural groups around the country will become much more clear. The specialty crop industry in the West has few if any subsidies and, therefore, has little to lose in this negotiating round, except notably perhaps their tariffs.

In an effort to closely monitor the Uruguay Round, California agricultural groups got together 3 years ago and formed an organization called CACIT...the Cal Ag Committee on International Trade. Its sole function is to closely monitor the GATT Round so various commodity groups and associations are plugged into the process. The group's biggest concern is that in the course of the 11th hour negotiations we will lose our tariffs in return for some other concession the U.S. wants from other GATT participants, whether it be increased grain exports to Mexico or intellectual property rights protection.

The whole issue of tariffs leads me into the second issue, the trend toward bilateral trade negotiations, particularly with Mexico.

Last May, a delegation of California agricultural leaders visited several administration officials and members of Congress in Washington, D.C. to discuss a

variety of trade issues. In talking with various individuals during their visit, it became apparent the Bush Administration was extremely interested in rewarding Mexico for recent strides made in opening up markets to imports and in loosening restrictions on foreign investment.

In the area of agriculture since 1987, Mexico has converted many of its import licensing requirements to tariffs and then reduced those tariffs to about the 10- to 20-percent level. Just last year, Mexico announced a new program permitting up to 100 percent foreign ownership of businesses in Mexico for most industries. Direct farming, however, was not among them.

In the weeks that followed their visit, it became apparent the rewards the Bush Administration were considering were to come in the form of duty-free access to the U.S. market on a wide-ranging list of agricultural and other manufacturing items through what is known as the generalized system of preference program or GSP.

Basically, GSP is a program designed to assist lesser developed countries to be competitive in developed markets such as the United States. We and other agricultural groups across the country have a significant problem with using this program to grant unilateral duty concessions to Mexico and other countries.

First, the term "competitive" is in our mind a key word. Various studies have shown Mexico to be quite competitive in U.S. markets on a variety of agricultural items, particularly in the fruit and vegetable sector. There is quite frankly no need to make them more competitive. Doing so only puts more money in the pockets of Mexican growers at the expense of U.S. growers.

Our second problem was that granting bilateral concessions now during the middle of the Uruguay Round is just plain bad policy. It's giving away our negotiating leverage to further develop export markets. In our minds, it's tantamount to showing your hand prior to the start of a poker game. It just makes no sense.

If we're going to grant concessions to Mexico, or anyone else for that matter, let's do it in the context of the Uruguay Round, where we stand a better chance of getting something in return.

Much of the trade discussion that will take place between the United States and Mexico in the next 2 to 3 years will be conducted under the auspices of a new bilateral agreement announced last fall called the "Understanding Between the Government of the United Mexican States and the Government of the United States of America Regarding Trade and Investment Facilitation Talks." The "Understanding" was hailed by the Administration as another important step in the liberalization of trade between the United States and its third largest trading partner.

Although the Administration went to great lengths in the weeks that followed the announcement to say that the talks were not aimed at reaching a free trade agreement with Mexico, it's important to note that similar understandings were entered into between the United States and both Israel and Canada prior to the establishment of free trade agreements with those two countries.

U.S. officials continue to deny that a U.S./Mexico free trade agreement is in the offing, but it's the old story. If it walks like a duck and talks like a duck...

Chances are within the relatively near future a North American common market will exist either formally or on a de facto basis.

The third and last issue is food safety and its impact on trade.

Food safety has become the No. 1 issue on the agenda for ag groups across the country.

Because we spend most of our time within our own national borders, it is difficult for us to realize that the food safety issue is more than just a problem here at home. Let me assure you that it is certainly more than just a domestic issue. Our trading partners and competitors world-wide are keeping close tabs on what's happening in the United States. It's having a distinct effect on the flow of goods both into and out of the country.

The best recent example of this occurred last year in Korea. The Alar contro-

versy on apples received world-wide attention, particularly in East and Southeast Asia. Shortly thereafter, quasi-governmental laboratories in Korea began sampling a variety of U.S. agricultural products after arrival there, and grapefruit were among the commodities tested.

To make a long story short, one laboratory in particular misread the results of a test on Florida grapefruit and determined low levels of Alar were present on the product. Within hours, all sales of grapefruit in Korea virtually came to a standstill as the Korean media picked up on the story. It didn't matter that Alar had not been used on the grapefruit. It didn't matter that there were no cultural benefits for the use of Alar on grapefruit. Assurances were sent to the Korean Government via every channel available—both official and unofficial—to try and convince the Korean Government that an error had been made. By the time the recognition was made, the market had been lost.

In the weeks that followed, the Korean Government also announced a new fruit and vegetable pesticide inspection program that effectively prevents imports of perishable products into that country. This is an excellent example of how the food safety issue can be one of the more devastating nontariff barriers exporters of agricultural commodities can face. It's an incredibly powerful tool.

In the Uruguay Round, the Bush Administration is aggressively pushing for substantial changes in how we deal with these issues under the GATT. From the perspective of the Western specialty crop industry, this is perhaps one of the more important potential agreements that could come out of the Uruguay Round. The Administration is pushing hard for harmonized standards using internationally recognized bodies such as the Codex Alimentarius, the International Plant Health Organization, and others.

But while the Bush Administration is pushing hard for a victory in this area in Geneva, at the same time, environmentalists and some members of Congress are working hard to tighten residue laws and other regulations in this country that will add further restrictions and burdens to the flow of international trade. The result is a conflict in policy. While the Administration is trying to ease the flow of goods, others are working hard to restrict it. This conflict, by the way, is not lost on our trading partners overseas who see our efforts to reduce or eliminate nontariff barriers as being hypocritical.

What all this boils down to is competitiveness. It truly is, and will be the "buzz-word" for agricultural trade in the 1990's and into the twenty-first century. It, indeed, became a much smaller world in the 1970's and 1980's. Trade in agricultural goods now exists in a global marketplace. In the years to come, those who can remain competitive in this marketplace will be the ones who will succeed and endure.

One of our greater, continuing major challenges now and in the years to come will be to educate our lawmakers and regulators that for United States agriculture to be competitive in the 1990's and into the next century, we cannot be burdened with continued legislated increases in our production costs.

Increases in the minimum wage, mandatory health benefits, the reduction in the availability and use of technology all combine to make us less competitive in the world marketplace.

Unfortunately, however, the very people who get on a soap box talking about how we need to keep America strong and competitive are the same people who turn right around and enact measures that reduce our ability to compete.

We have quite a job ahead of us.

Thank you very much for inviting me to be with you today.

BARGAINING EXPERIENCES: Changing the California Law AB-2500, AB-2642, AB-1944

David L. Zollinger, Executive Vice President
California Tomato Growers Association

I am pleased to report to you that California's bargaining associations were successful during 1989 in bringing significant amendments to the California Bargaining Act.

The amendment provides a means by which costly, time consuming, and at times bitter disputes between processors and growers' cooperative bargaining associations may be resolved through a process of "conciliation" and in a manner that could allow an amicable relationship to be in place between the parties at the conclusion of the process.

Jean-Mari requested that I not speak to the content of this new law, but rather to the experience of sponsoring and helping to guide the legislative campaign.

As I think back to what it required to be successful in this regard, and particularly with such a controversial piece of legislation, I believe the following attributes of the joint campaign to be the most important:

— Persistence (1982 to Oct. 1989);
— Organization and cooperation, by associations, growers, lobbyists, supporting groups;
— Competence of associations, lobbyists, legislator supporters;
— Powerful author of the bill—Speaker Willie L. Brown, Jr.;
— Forthrightness and candor in all legislative dealings and testimony;
— Political leverage/and good judgment as to when to use them; and
— Grower (most important), grassroots, support.

Today, I'm actually speaking about three companion bills: AB-1944, introduced in 1982, became law in January of 1984; AB-2642, introduced in March of 1987 and vetoed by the Governor; and finally AB-2500, which became law January 1, 1990.

The legislative effort dealing with AB-1944 of the 1982-83 period set the stage for the latest thrust.

The earlier bill was also authored by Assembly Speaker Willie L. Brown, Jr., and when first introduced in addition to requiring "good faith" bargaining also provided for a method of "dispute resolution." When, after a most bitterly contested battle (one of the opposite players said it in fact gave him a heart attack), AB-1944 became law, it provided:

A. A definition of "good faith" (said the same thing as good faith).

B. A Bargaining Advisory Board of growers and processors that would investigate and advise the legislature as to, among other things, the need for a dispute settlement mechanism.

Soon after the passage of AB-1944, CTGA filed a complaint under the "good faith" provisions of the new law against Beatrice/Hunt-Wesson, Inc. The complaint was about Hunt's failure to bargain over its so-called "hidden price formula" pricing system. After the expenditure of sums in excess of $100,000 for legal

expense, waste of considerable management time, and bitter scorn leveled at the Association by the processor, a settlement was reached! Not too long after the Hunt incident, CTGA again faced a challenge by Stanislaus Food Products, which took it to three different legal actions in three different venues at the same time. This was a classic unresolved bargaining dispute over price and terms that was not resolved for nearly a year and brought great hardship to the affected growers and their Association. About this same time, the Olive Growers Council was having problems with processors as was the Freestone Peach Association with certain members of the frozen food industry.

As a consequence, it became the general concensus that a dispute resolution method must be established through the legislative process.

The 1982-83 legislative campaign associated with AB-1944 taught us what to expect in the way of strategy on the part of the opposition, as led, by the California League of Food Processors.

We knew that we were facing fanatic opposition over the arbitration provision. Canners could be expected to attempt to:

A. Divide the bargaining groups;

B. Belittle the proposed legislation;

C. Promise to handle problem some other way;

D. Wear down the opposition;

E. Constantly state that canners are agriculture and how can you legislators choose between the canners on one hand and growers on the other when both are of the same ilk; and

We did not anticipate that there would be an attempt to damage the integrity of the more "out in front" bargaining groups. (A vicious attack was launched against CTGA when the opposition widely distributed in the offices of the legislature an unfounded complaint in Federal Court lodged against CTGA by a processor as a consequence of an ongoing bargaining dispute.)

The Bargaining Association's Strategy

As introduced to the Assembly, AB-2642 held two methods of dispute resolution — arbitration and conciliation.

The bill cleared the Assembly with strong Democratic backing (possibly due to the influence of the author of the bill, Speaker Willie Brown).

Republicans just could not accept the inclusion of arbitration.

We knew that, in addition to our problems with Republicans in the Assembly, the Senate was a mine field due to the opposition, both from Democrats and Republicans. Therefore, as the bill entered the Senate, arbitration was dropped as a consequence of political reality.

The bill moved, tenuously, through the Senate still having significant Republican opposition emanating from the minority leadership of both the Senate and Assembly.

Then, our Governor vetoed AB-2642.

The strategy then became to arrange a visit with the Governor so we could discover his concerns and obtain his support before moving ahead with legislation in the next session.

As we had worked the Assembly on AB-2642, numerous of our Republican friends had said, "I will support the bill if it does not provide arbitration." We knew that to be successful, we must have significant Republican support.

The Governor's problem was that he was concerned about too much govern-

ment involvement in the conciliation/mediation process.

Therefore, when AB-2500 was introduced, it contained only "conciliation" and provided for the conduct of conciliation to be accomplished by the American Arbitration Association.

Other than these major strategic decisions, it was our objective to keep the pressure on with letters, phone calls, and strong grassroots grower support at all times.

Several events stand out in my mind as highlights of the entire 32-month process.

A. First meeting of Assembly Agriculture Committee for AB-2642.

1. All associations present testified in support of the legislation.

2. Willie Brown introduced the bill, and to the amazement of processors, stayed through the lengthy hearing for the vote.

B. After AB-2642 became a 2-year bill, we had the need to maintain legislative interest, and therefore, an informational field hearing was held in Visalia, hosted by Adin Hester and the Olive Growers Council. This Assembly Agriculture Committee information hearing will always serve as a model of such events.

1. Speaker and other legislators present in large numbers.

2. Growers from most of the commodities stood up and laid it on the line—much to the amazement of processors—and processors lost their "cool" in the hearing.

C. Processors not willing to even accept the word, "conciliation," participating with Ron Schuler in a meeting of the principals at the Oakland Hilton by helping Ron list on the blackboard the actual mechanism of conciliation and setting forth the how, when, and by whom conciliation would be entered into.

D. Our mutual frustration and disappointment when after a 2-year legislative battle, AB-2642 was vetoed by the Governor.

E. The shock and amazement expressed by the opposition when with hesitation, and at the earliest possible opportunity, the bargaining associations boldly reintroduced the legislation in a somewhat different form (conciliation to be conducted by the American Arbitration Association) under the banner of AB-2500.

F. I will not soon forget when Ken Lindauer of the Prune Bargaining Association, in a public forum, during a special meeting of the Bargaining Advisory Committee called to discuss the now moving grower bill, asked of the processor chairman of the board, "Are you processors interested in this dispute resolution legislation, or are you not?"

In October of 1989, the Governor signed AB-2500, which brought to a successful conclusion 32 months of truly mutual effort. Canners had mounted an extraordinary effort to oppose the legislation, and, thus, Victory was indeed sweet.

Before the Governor received the bill, it had passed both Houses with the overwhelming support of both Democrats and Republicans and with Republican Assemblyman Bill Jones of Fresno as co-author.

Conciliation is not arbitration! It's an entirely different process. How meaningful and effective its use in agricultural bargaining will be is an experience yet to be gained. With the past history of the high rate of success in other industries by American Arbitration Association, I for one can tell you that the method will be tested.

Finally, and again: Persistence, organization and cooperation, competence, strong individual as author of the legislation, forthrightness and candor in dealing with the legislature, political leverage, and most important strong "grassroots grower support" created legislative success.

I wish to offer my sincere thanks today to the bargaining association managers and presidents, to our very competent lobbyist and legal advisers, to John Welty of my staff, and most especially to the individual growers who testified many times in support of the legislation and faced potential marketing peril by doing so.

BARGAINING EXPERIENCES: The Washington Experience

Larry Jorgenson, President
Washington Potato Growers Association

The first attempt at trying to get bargaining legislation in place began in 1981. We contacted all the areas that had bargaining legislation in an attempt to get as much background information as possible.

In 1983, a bill was introduced to the Senate. The initial draft included all of the provisions we wanted, including final offer selection arbitration. By the time the final draft was introduced, the arbitration clause was no longer part of the legislation. We contacted all the agricultural organizations in Washington to gain their support. However, no one came forward to support us. In addition, our own membership had eroded because of a stand taken in 1981.

The bill was introduced on February 16, and the first hearing of the agricultural committee was on February 22. The processors landed in the middle of the bill with both feet. We found out they had lined up former members as well as existing members of our association to testify against it. So rather than face the insurmountable odds, we decided to withdraw the legislation.

During the summer of 1988, Dick LaFramboise, Dick McFarlane, and myself met a few times to decide if we should attempt it again. We reviewed the past problems and decided on a course of action. However, this time, we couldn't get the potato growers to agree.

Then in December 1989, Lamb Weston, recently purchased by ConAgra, presented the growers with a no-negotiation contract. The company said the contract would reduce grower returns by 3 to 4 percent. Actually, it would return to growers 12 to 15 percent less than for the 1988 crop.

We sent letters of protest to the company, to no avail. We called a grower meeting on January 3, 1989. More than 200 potato growers attended and voted unanimously to proceed with bargaining legislation.

The bill was first read in the Senate on February 9, 1989. Both Senate and House referred the bill to the agricultural Committees, and a joint hearing was held on February 21, 1989.

Prior to the hearings, a small group of growers and processors met with committee members of both House and Senate, one of a series of useless meetings. The only thing accomplished was to point out the differences between the two groups. Then at the hearing on February 21, we had 97 growers in attendance.

Potato growers and corn growers made it clear that bargaining in good faith in Washington was nearly impossible. The combination of briefs and growers' support got the bill off to a good start.

The completely negative approach by the processors was beginning to bring the legislators to our side. As an example:

A letter from John Cady, president of Snack Food Association (SFA), to member growers read: "Several other growing areas are also talking about banding together for purposes of establishing base prices per hundredweight for 1989-90. SFA encourages its members to negotiate with individual growers. Then in big bold letters, "Do not negotiate with a cooperative."

Another example came from the legislative report from the processors association.

"Have any of you talked lately with Senator "Tub" Hanson, or have any additional information than the following? Please call me today with any items you

would like include in an action bulleting to WFPC members. Also advise of any suggested opposition strategies. We asked those attending the January 25 WFPC luncheon to begin to identify growers who oppose such legislation and would be willing to speak out, especially at hearings."

The processors' association legislative newsletter contained the following five points:

"1. It drives a wedge between the grower and the processor and seriously threatens the agricultural partnership that has contributed so vitally to the success of all ... and to the benefit of the consumer;

2. It diminishes consumer demand for Washington grown food as raw product costs become increasingly noncompetitive;

3. It eliminates the basic rate and negotiations with buyers of raw products based on best business decisions.

4. It deprives growers and processors freedom of choice as to whom they deal with and forces independent growers to join an association to survive; and

5. It increases substantially State intervention in negotiations between buyers and sellers of agricultural products.

We prepared a carefully worded responses to all of the processors' points, indicating that all we were looking for was an even playing field with realistic returns.

The first 2 weeks after the bill went to the agricultural hearing, we had at least 20 growers in Olympia every day, talking to the legislators, especially members of the rules committee. In the Washington legislature, the rules committee has to approve the bill before it appears on the calendar for reading. This means, of course, that you have to have close contact with the rules committee. The major focus was to show the legislature that nearly all of our processors in Washington are owned by multinational conglomerates that are headquartered outside our State and our country. Only one processor is left that is owned within the state.

One grower group came out in opposition to the legislation. That created one of the bigger problems we faced.

We realized quickly that we were not going to have a problem in the Democratically controlled House. Our biggest support came from Margaret Rayburn, chairman of the House Agriculture Committee. So, we began to concentrate our efforts on the Republican controlled Senate.

A joint committee or the House and Senate Agriculture Committees met with processors and then with growers to see if there were any compromise position. The processors recommended the legislation be tabled 1 more year for study. Once again, the processors' intent to kill the legislation helped us.

As soon as the processors realized the legislation had a good chance, they began to contact growers and grower groups to try to get amendments.

It was shortly after this that we ran into our biggest stumbling block. The Senate leader, Jeanette Hayner, told us she did not like the arbitration portion and if we wanted to get the legislation in place, it would have to be removed. Other items were also removed, such as deductions and remitting fees.

The bill passed the House on March 15 by a vote 93 to 5. It then went to the Senate where, with amendments, it passed by a vote of 43 to 2. On April 18, the House concurred by a vote of 96 to 1. And the governor signed the bill on May 12, 1989.

From the time of the grower meeting on January 3, it took 128 days to get the legislation in place.

The bill was amended considerably from when it was first introduced. Processor amendments removed some of the important items we wanted.
So what did we have left?

1. When we started, we were looking at all vegetable crops. We ended up with two crops—potatoes and sweet corn. The reason was that we had some organizations that were not very hot on the legislation and thought they didn't need it.

2. One section in the legislation says, "It is the intent of the legislature that a workable process be developed through which fair price and other contract terms can be arrived at through negotiations between processors of agricultural products in an accredited association of producers. In developing rules and administering this chapter, the director of agriculture shall recognize this intent."

3. The accreditation process requires the following: The eligible association must be owned and controlled by producers, must have valid and binding membership agreements, must represent a sufficient percent of producers or that members produce a sufficient percent of potatoes or corn to enable it to serve as an effective agent for producers, and have contract negotiation as its principal function.

4. There was a provision in our legislation for a committee to be appointed to supervise and see that the legislation be carried out the way it was supposed to be. The director of agriculture appointed six producers and six processors to this committee. We didn't feel it was the intent of the legislation that this committee would be the people who would be drawing out the rules under the legislation.

We had a tough time convincing people right to the end that this was producer legislation. We kept insisting on this even with the Department of Agriculture that we were talking producer legislation.
Some of the important items that came out of the advisory committee rules were:

1. Bargaining must start at least by February 1. It must be completed by March 1 in the case of potatoes and March 5 in the case of sweet corn. The reason for that is that negotiations had to be completed at least 30 days before what was determined as planting date.

Application for accreditation must be received by the director of agriculture by September 1. However, for the first season, the application date would be January 10. We had all of our accreditation complete by December 23, 1989.

2. The director will not accredit more than one grower organization for each processor. One of the things that came out of the rules committee was that it decided the accredited association would have to make application with each individual processor. It wasn't the intent of the legislation when it first started.

3. Members of the proposed negotiating unit represent more than 50 percent of its growers of record for the previous two seasons or their acreage represented more than 50 percent. So, we have two conflicting things here, one in the legislation that requires a sufficient number and rules that it had to be more than 50 percent.

4. One of the key clauses of the legislation, and this is another difficult one we had to swallow states as follows: "The obligation to negotiate does not require either party to agree to a proposal, to make a concession, or enter into a contract." In other words, even after you have negotiated a contract neither party has to sign it.

We're not really pleased with what we ended up with, but to look on the

bright side, you know you can't fall out of a basement window. We're in a position where at least the processors have to sit down to negotiate. And that's certainly better than what we had. Also, we have a commitment from Senator Hayner, who is the Senate leader, that if the processors do not negotiate in good faith, she will personally ensure us that we will get final offer arbitration in place. It's a commitment from a legislator, so I guess maybe we'll look at that when we see what happens this year. One of the things that just astounded us over the past year or so is the fact that the processors have continually tried to get around the legislation and attempt to do things the way they continued to do them in the past.

In previous years we've had no problems with them collecting fees for us. They would deduct the fees and remit them to us. This past year, we had two processors who refused to collect fees and remit them. This was something that was in our legislation and ended up getting taken out.

The important thing is that we now have legislation in place and we hope to be able to build on it to obtain legislation that will require good faith bargaining by both growers and processors.

BARGAINING EXPERIENCES: California Milk Pricing

William C. Van Dam, Administrative Economist
Dairyman's Cooperative Creamery Association

Certain facts about the California dairy industry should be put before you. Each plays a role in milk pricing decisions in this State.

1. All segments of the dairy industry are doing well in California.

Cooperatives continue to grow in terms of volume handled, percentage of milk represented, and, perhaps most importantly, in financial strength.

Producers in California have unique advantages over producers in other areas and despite receiving the lowest milk prices do achieve on the whole the best yearly net income of any State. It is clear from all research studies and from the production response that California is the lowest cost major production area in America.

Processors continue to prosper. California has a huge population that is concentrated in two major metropolitan areas. This makes for high volume (which equals high efficiency) operations.

Consumers are relatively better off in California in that they get a better product (because of higher milk solids standards in California) at a lower price.

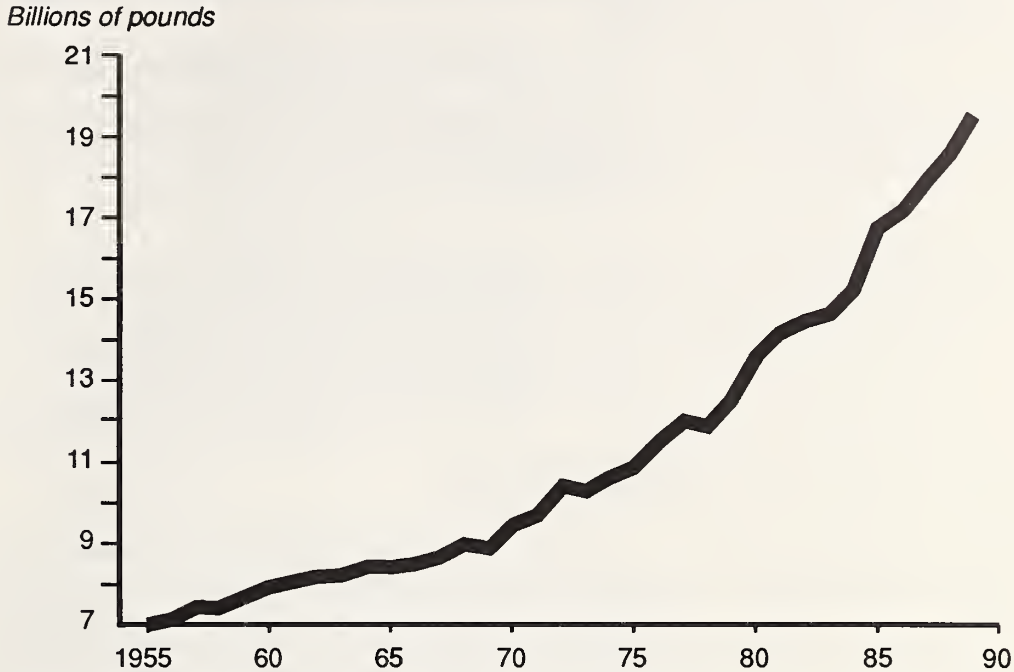
2. Milk production has been and will continue to grow.

Figure 1 shows milk production growth in California since 1955. In particular, notice the change in growth pattern that began in 1970. That year (1969 actually) marks the beginning of the implementation of the Pooling Plan. Pooling is in itself a complex and somewhat confusing subject. The important result of pooling was that the producer's income was no longer directly determined by the purchaser of the producer's milk. Prior to pooling, the producer's share of the higher Class 1 milk price was determined by where the milk was shipped. After pooling was in place, a producer's share of the higher price was received without regard to who handled the milk. It is impossible to overemphasize this point. It is more than mere coincidence that our largest cooperatives can also trace their largest growth spurts to the advent of pooling.

3. Prior to the year 2000, or very shortly thereafter, California will replace Wisconsin as the number one dairy State. Some brief comparisons between the dairy industry of Wisconsin and California are in order.

Item:	Wisconsin	California
Dairy farms (number)	34,000	2,000
1989 milk production (pounds)	25 billion	19.5 billion
Milk cows per dairy (number)	55	500
Production per dairy (gallons per day)	234	3,106
Annual gross milk check (dollars)	$90,000	$1,100,000
1988 to 1989 growth (percent)	-2	+5

Figure 1—Total California Milk Production



One would think these were two different industries. Similarities are that each produces the same product—milk, from the same source—cows. Other than these similarities, the industries are very different. The return to management is always going to be some percentage of gross income. Looking to the future, any new entrant to dairying must ask if he (or she) is interested in some percentage of the $90,000 in Wisconsin or some percentage of the $1,100,000 in California? There is little to suggest that such decisions will go in favor of Wisconsin.

4. Prior to 1970, about 70 percent of the milk produced in California was used as fluid milk. In 1989, that number has dropped to 35 percent. Fluid milk sales continue to grow in this State but milk production has increased even faster—much faster. This trend will continue with further erosion of the percentage of milk receiving the higher Class 1 (fluid milk) price.

The important, but not readily apparent, point is that as we moved through the 1970's and 1980's, dairymen in California were increasing production at incredible rates while each year receiving, on the average, a lower price for their milk. Indeed, because of the way the Pooling Plan works, new production is always added at the lowest possible price. In this State, unlike any other in the country, producers share in the Class 1 income based on Quota holdings. All Federal Orders (the Pooling Plans used in other States) pay producers, all producers, the same average price for their production.

Two California milk producers who have dairies side by side, producing the same amount of milk of equal quality can (and often do) receive as much as $2.00 to $3.00 per hunredweight difference for their milk. One producer's milk could be covered 100 percent by Quota while the second could have no Quota.

5. Virtually all new production must be processed into manufactured dairy products.

Cheese is the demand item for milk and indeed California has moved in this

direction. In 1970, California produced a total of 17.5 million pounds of cheese. In 1989, we will produce nearly 600 million pounds. There is much more to come.

6. California prices and pricing rules are set separately in California.

This is possible because there is no important movement of fluid milk into or out of California.

A brief summary of the above points:

1. Dairy industry is profitable;
2. It is the low cost area and growing rapidly;
3. Wisconsin production is slipping;
4. Fluid milk is becoming less important;
5. Cheese is becoming more important;
6. California milk pricing applies only to California.

Market Structure

On the surface, there would appear to be nearly total producer control of milk marketing. The nine largest cooperatives market about 87 percent of the milk. The four largest, of which DCCA is one, market 64 percent of the milk. All of this milk is firmly bound to the cooperative by contracts that always require 100 percent of the milk to be marketed through the cooperative and commonly do not allow a member to leave for 6 months to a year. On the other end of the scale, there is no single buyer of milk that purchases quantities even close to the quantities represented by the largest cooperatives.

This is a clear case where some knowledge of the type of cooperative is necessary. At one end of the scale is our cooperative in which total retains equal about $140,000 per active member. Total investment in facilities to handle and process milk are in excess of $350,000 per member. These producers have a great vested interest in making sure their investment is properly managed and that returns are adequate to justify the investment. At DCCA, we process 65 percent of our members' milk into final products.

The other end of the scale is represented by both of the large cooperatives in Southern California. One has no plant at all and very limited retains, while the other has a relatively modest plant used only to balance milk supplies. The plant processes only 10 percent of its supply. Retains and total investment are quite modest (less than $50,000 per member) and these producers quite predictably are more interested in current milk prices than in a pricing system that assures them proper return on investment.

Those large cooperatives without facilities to handle their product are at a bargaining disadvantage because they cannot threaten to withhold product. Milk is, after all, produced 365 days a year and cannot be stored for more than 2 or 3 days (assuming one could find enough tanks for even one day's milk).

The nature of the cooperatives competing for sales and the existence of State regulated minimum prices create an environment where there is very little bargaining with the customer. Any bargaining has to do with charges for services rendered and takes place within a very narrow price range.

Milk Pricing

All this brings us to the topic at hand, milk pricing. The ONE important fact to understand is that USDA stands ready to clear the market of all excess supplies through the Commodity Credit Corporation. This puts a floor under all of the prices in this country. I am not here today to defend or to criticize the price sup-

port program. It does provide stability to the industry. If properly managed, as I believe it now is, it is not an undue burden on the U.S. Government. When improperly managed (read this to mean politicized) it can become costly indeed. The intent of support prices is that they are to be a safety net to prevent the collapse of an entire industry if it becomes slightly long on overall supply.

The minimum price paid to the producer for milk is actually set by the California Department of Food and Agriculture, Bureau of Milk Stabilization. The formulas used in this pricing are complex and normally quite boring—except at hearing time when they can become interesting indeed. A quick review of the classes and how price is set:

Class 1 — Fluid Milk. By formula that considers cost of producing milk, value of milk in residual uses, and the consumer price index. This will generally result in a price for Class 1 milk that is $2.00 or more higher than the value of milk manufactured into residual products. Residual products are those that are sold to USDA—butter, nonfat dried milk and cheese.

Class 2 — Cottage Cheese, Sour Cream. By formula that uses the residual value (Class 4a) plus a factor.

Class 3 — Frozen Products. Same as Class 2 but with a smaller factor added to Class 4a prices.

These next two classes are the residual products sold to USDA when production exceeds market needs.

Class 4a — Butter and Nonfat Dry Milk. These are set using the market value of these products less a "make allowance."

Class 4b — Cheese. Much the same as 4a except yield, values and "make allowance" are in much greater dispute.

The Department of Food and Agriculture conducts ongoing cost studies of all milk processing plants in the State. The studies provide the base data used to determine the "make allowance."

Problems

In any regulated environment, there is going to be friction. Milk pricing is no different. A simple argument we have made many times is that the function of the regulation is to achieve the results that would have occurred in the "real" world, but without the wild swings in values. In that regard, California has done reasonably well, but that does not mean it has always been harmonious or without discord.

California producers receive less for their milk than do producers in other parts of the country. On the average in 1989, the difference was $.70 per hundredweight. Other parts of the country pay producers based on the Minnesota-Wisconsin (M-W) price. The M-W price represents the price paid by processors in the last large unregulated milk shed in this country. Processors in that area compete for milk supplies and the USDA collects the price data, which is published as the M-W price.

Some of our more vocal producers desire to have the M-W price used in California to set their prices rather than the present system. California processors could not justify the investment required to handle the milk supply if they had to pay the M-W price. The problem in California is not related to getting our growing milk supply marketed. It appears that with the slipping production in Minnesota and Wisconsin and the increasing population will cause increased demand for California milk. Our problem is to maintain a pricing system that will encourage sufficient plant capacity to process the milk being added to this State. The laws of economics must be allowed to work. We cannot allow artificially high prices to producers that will generate unreasonable income expectations. Money makes milk.

We cannot allow a system to develop where only the cooperatives will invest

in new plants—and then operate these plants at a loss (for the good of the producer). That is the quickest way to ruin. And we must recognize that 80 percent of the consumers in this country live (and eat) east of the Rockies. As we become the "cheese basket" of this country, we must recognize that we produce this cheese a transportation differential away from the consumer.

It is the combination of production cost at the dairy, processing cost at the plant, and transportation cost to the consumer that will determine who will produce the cheese in this country. I submit that the role will fall generally on the West Coast and primarily on California.

We cooperative managers in California find ourselves in the somewhat strange and often uncomfortable position of not pushing for the highest possible price for milk for our members. It is not in their best long term interests to price their product in such a way that there will be a supple response larger than our capacity to handle it. At the current rate of increase in California, there will be the need each year to add the equivalent of two major cheese plants handling 2 million pounds of milk per day each. That is an annual invesment of $25 million to $40 million per year. Pricing must be set to encourage that investment.

THE CAPPER-VOLSTEAD CHALLANGE

Leslie Mead, Associate General Counsel
National Council of Farmer Cooperatives

After nearly a decade of relative calm in the area of cooperative antitrust challenges, attention is once again being given to the limited antitrust exemption granted cooperatives by the Capper-Volstead Act.

The Capper-Volstead Act, enacted in 1922, permits agricultural producers to act collectively in the marketing of farm products and to have marketing agencies in common. The Department of Agriculture has the authority under the law to assure that cooperatives do not use this exemption to unduly enhance prices.

This summer, Senators Howard Metzenbaum from Ohio and Bill Bradley from New Jersey asked the General Accounting Office (GAO) to study the impact of Capper-Volstead on consumers, farmers, and the economy generally. The GAO is the investigatory arm of Congress. The letter to GAO specifically asks that the study include the following areas:

1. Whether the Capper-Volstead exemption is still needed given changes in agricultural markets;

2. The economic costs to consumers and the Government of maintaining Capper-Volstead for dairy cooperatives;

3. The effect of Federal marketing orders on price paid by consumers of dairy products;

4. The incidence of "over-order premiums" for milk, and the correlation between over-order premiums and the presence of large dairy cooperatives with high market shares; and

5. The history of oversight of the Capper-Volstead exemptions by the Secretary of Agriculture and suggestions for improving the effectiveness of oversight.

GAO has looked into several of these areas in the past. For instance, in the 1979 report entitled, "Family Farmers Need Cooperatives—But Some Issues Need To Be Resolved," GAO examined whether changes in agriculture had affected the need for cooperatives and Capper-Volstead. The report concluded that many of the problems facing independent family farmers today are basically the same as they were in the 1920's and 1930's when the basic cooperative legislation was enacted.

That report also looked into the administration of the undue price enhancement authority given USDA under Capper-Volstead. The report recommended that the Secretary of Agriculture establish enforcement and monitoring systems to ensure cooperatives did not raise prices unduly, and better define undue price enhancement. The report also recommended the development of a general set of cooperative conduct principles and the inclusion of tailored conduct principles as terms and conditions in all future marketing orders.

As far as I know, these suggestions have not been implemented.

It is clear that the thrust of the GAO study request is toward the dairy industry. Kelly Signs of the Senate Judiciary Subcommittee on Antitrust, Monopolies and Business Rights, told us the push for the study came from independent dairy

interests in Ohio. Ms. Signs said the study was requested at this time so that its finding could be considered in the context of the farm bill.

There is a small trade association representing independent dairies in Washington called the National Independent Dairy-Foods Association or NIDA. The group consistently testifies against cooperative interests in both the antitrust and tax areas. It has had little success in the past advancing its views. I suspect it is also involved in pushing this issue at this time.

How the GAO report on the dairy issues may turn out may be indicated by previous studies. In 1988, GAO published a report entitled "Milk Marketing Orders Options for Change." In that report, GAO recommended lessening Government influence on milk prices through the gradual elimination of milk orders.

The milk marketing system was singled out for criticism in the 1979 Report to the President for the Review of Antitrust Laws and Procedures. I suspect GAO will draw from its 1988 report on milk marketing orders and the 1979 Report to the President for the Review of Antitrust Laws and Procedures when addressing the issues raised in the GAO study request letter. The study is expected to be released in June.

The National Council will continue to be active in this area. The Legal, Tax and Accounting Committee Subcommittee on Antitrust has designated a small working group to provide the hands-on legal expertise we may need to respond to the GAO report or hearings. An economic study of the impact of cooperatives may also be coordinated through NCFC.

FOOD SAFETY:
Under the Gun: The Apple Industry's Experience

Tom Hale, President
Washington Apple Commission

Industry response in food safety scares must be factually based and, equally important, reflect a seasoned understanding of public perceptions and how they are manipulated. Like it or not, it is perception that defines the scare and dominates the agenda. Clearly, it is generally *not the nature of the risk that prompts crises but rather the nature of the communication.* In this proposition, chemical users and manufacturers, and Government regulators are clearly at a disadvantage today because not only is the nature of chemical risk potentially volatile by definition, the nature of the debate and the nature of the social and cultural context within which it occurs are extremely complex and problematic, and not well understood by these participants.

For the food safety question to be addressed effectively, it must be dealt with strategically in the long-term where opportunity lies for changing perceptions about chemical risk, the rules of the debate, and the societal response. It has become painfully clear in the recent decade that short-term efforts that deal chemical to chemical are futile. They are confined to tactical response (defensive) activities that address factual risk but ignore the nature of the communication. The real winners in food safety debates are the ones who effectively influence the communication processes.

Government regulators have the greatest potential for controlling the high ground in food safety debates if they understand the communication dynamics, are organizationally prepared, and have the will to exercise their influence. Speaking to this point, Dr. John Moore, EPA's former assistant administrator for pesticides and toxic substances said, "...the Alar panic suggests a strategic failure of risk communication on the part of EPA and underscores the need for more comprehensive, more proactive public education and risk communication initiatives on pesticide issues than EPA has carried out in the past."

Let's shed some more light on the dynamics of risk communication by examining the character of the Alar debacle—by understanding the *nature* of the problem.

With Alar, as with most chemical residue on food, the risk itself is of the worst type. It is a hidden risk that is present on an otherwise wholesome, healthy product with which Americans have great identity (the apple); it is a risk over which consumers have no voice or control; it is an imposed risk that broadly impacts but may have its greatest effect on the most vulnerable, unsuspecting segment of our population that we clearly protect—children; it involves a dreaded disease (cancer), the linkage to which is inexact, confusing, and misunderstood; it is a risk that is avoidable without serious consequence through use of alternate production methods or consumption of freely substitutable foods; and finally it is a risk that offends the sense of fairness.

For 3 years, Alar sat as a keg of dynamite in a socially volatile atmosphere while the regulatory system patiently went through its drills. During this time, much of agriculture's leadership saw the handwriting on the wall and recommended to growers against usage of Alar. But, during this same period the chemical manufacturer was reassuring growers that there was no proven health problem, and those growers using Alar were experiencing better financial returns on higher qual-

ity fruit. The result was grower confusion and skepticism, and some limited use.

Inevitably, the problem was ignited by the communication process.

Confusion also dominated the nature of the debate. There were no clear answers; the debate was heightened by conflicting scientific assessments—what I term the "yes, but..." syndrome. There existed a lack of credible, regulatory leadership that was willing to step forward timely to lend clarity to the issue. The debate raged between relatively narrow special interest groups, neither of which was perceived as credible but both of which were perceived as inflexible and polarized in their positions. There was drama, and hence a large amount of information flow, which itself heightened the perception of risk. There existed a legal/regulatory system that prevented early resolution of the debate by locking in a continuing availability of Alar. And, finally, the timing of the explosion couldn't have been worse—in the middle of a marketing season.

So, the public became aware of the risk, was upset by the debate and had to process all this through a basic ignorance about risk assessment. For the initial 30-60 days, the public demonstrated an inability to cope with the plethora of hazard warnings, a skepticism of most everyone that spoke to the issues, an expectation that zero risk should be an attainable goal, and low confidence in those who manage chemicals in our environment.

In addition, the public was subject to and most influenced by a hyperactive press that greatly *amplifies* social issues. While the NRDC public relations campaign to muster public outrage was impressive, even NRDC was surprised by the press amplification of the issue. In my opinion, the continuing impact over Alar was largely the result of press coverage by reporters who are young, idealistic, and inexperienced relative to their more seasoned editors. This helps to explain for me the vast contrast between the reported "facts" and the later, more thoughtful, editorial opinions.

Dr. John Moore has summarized the Alar communication dilemma well, "...public opinion tends to be impatient with extended deliberations by scientists/regulators while health questions have been raised but not resolved. The NRDC report provided "answers" that the EPA was unprepared to provide. *The fact that the "answer" was faulty has no bearing.*" (Emphasis added)

Again, it is clear that risk communication did more to precipitate the problem than the risk itself. (What does this tell us about handling future scares and building public confidence?)

Also, in the dynamics of the Alar debate, the power of self-fulfilling prophecy became apparent. We began to believe that a meaningful problem with food safety existed, as so it did! And through this process irrational arguments gained notoriety and, hence, credibility. For example, we heard the popular wisdom that organically grown food would be the wave of the future; that more consumers would search for "pesticide-free" food; that the majority of people would prefer to be reminded of what pesticide residues exist in their food supply; and that more intense testing of food products for pesticide residues would provide for a safer supply. To a large extent, consumer advocacy groups and environmentalists were successful in convincing us of these truths. To a further extent, our own trade press and so-called "opinion leaders" unknowingly contributed to validating these opinions to the point where agriculture was falling over itself with schemes to mitigate largely nonexistent problems and convince consumers they don't need to concern themselves about food safety, which they're not really dwelling on anyway. These well-meaning actions created emotional reactions, which heightened the problem and fulfilled the doom and gloom scenario.

The Alar Scare

At this point, I would like to focus a bit more on what we know of the Alar scare specifically.

1. Nearly three out of four persons heard something that makes them think apples are unsafe to eat; extraordinary awareness. Even so, such dramatic familiarity was apparently empty of conviction because few homemakers considered it to be of such a threat that they stopped eating apples completely. They wanted reassurance.

2. While nearly half of all consumers demonstrated initial hesitancy about purchasing apples, more than half of them regained confidence within 35 days of the 60 Minutes show. Ninety to 95 percent have regained confidence today.

3. The Alar scare was broadbased demographically, with slight skewing to young women, those living in the Northeast, those with less than high school education, and light apple consumers; and slight skewing away from men 55 years and older, those living in the South and West, and post-college graduates.

4. There still remains a positive attitude about apples, especially their healthfulness. People make clear distinctions between "safety" and "nutrition," and appear over time willing to accept some risk to achieve nutritional benefit.

5. At the height of the controversy, 64 percent of the public believed the Alar health risk claims were blown out of proportion and that a lot of people overreacted.

6. Meryl Streep is least trusted among consumers in dealing with the safety of apples, falling just below the White House and Ralph Nader. Most trusted are the National Cancer Institute, American Medical Association, C. Everett Koop, and the family doctor.

7. For the most part, Americans feel safe about their environment. Compared with all problems facing our country, only 2-4 percent feel that environmental problems are the most important. Eighty-five percent feel "very safe" or "somewhat safe" about the food they eat, the water they drink (78 percent), and the air they breathe (69 percent).

8. In-store signage and product labeling about "no Alar" served to remind consumers of the issue, resulting in reduced sales.

9. In those markets where food safety claims were employed as a retail marketing tool, sales were down.

10. In those States where Government became proactive in introducing corrective legislation or developing corrective public programs on food safety, the greatest consumer reaction seemed to have occurred.

These lessons suggest that problems aren't quite as large or enduring as we perceive them to be or are led to believe in the heat of battle.

The facts of the Alar outcome should *not* be interpreted to mean Americans say they cannot be concerned about environmental quality. *Anxiety and uncertainty about the seriousness of environmental problems are easily triggered.* While people generally are not dwelling on food safety concerns, these concerns can be brought into focus quickly and forcefully. When motivated, the public in its broadest sense has the power to destroy product acceptance. Market (trade) sensitivity to food safety concerns is acute. For example, even the seemingly mild 10 percent drop in consumer confidence was more than sufficient to affect a 40 percent drop in apple prices. This effect finally led to policy decisions within the apple industry to get Alar off the market, and walk away from a valuable produc-

tion and marketing tool. So, while the people that stopped buying apples on a sustained basis were relatively few in number, the market impact was significant and, most importantly, the potential for widespread public rejection was acute.

Conclusions

Well, let's summarize all this. As a primary participant in a heated battle, the commission definitely has its assessment of what occurred, what lies ahead and what needs to be accomplished.

1. Marketplace perceptions will govern grower decisions on the acceptability of farm chemicals. When the marketplace (consumers, retailers, or both) demonstrates (objectively or not) that an unacceptable risk is present, growers will react decisively to distance themselves from the problem. Successful chemical manufacturers and distributors will understand that from a food safety perspective their customer is not only the grower, but also the people who purchase grower products. The consumer has great potential power to "will" chemicals out of usage and off the market. (Witness what action has just taken by manufacturers of EBDCs and Benlate).

2. Media atittudes hold tremendous capability to amplify or attenuate chemical risk perceptions. The legitimate press, while desiring to do a good job, does not have the luxury of time to sort out fact from fiction on a fast-breaking story. Therefore, Government at all levels, and science and health professionals, needs to be organized (i.e., prepared) and courageous to take immediate stands on spurious claims about pesticide residues and human health risk. The Government voice on Alar was effective in quieting the scare; it was also 3 weeks late.

3. The future will find more conflicts because environmentalists are trying to increase the regulatory standards against which chemicals are measured, thereby increasing the potential for action, media coverage, and public debate. These groups have already provided the dramatic backdrop—reregistration of chemicals. They have also somewhat eroded confidence in the regulatory system, where occurrence is a precept for change. In dealing with these special interest agendas, the Government must be able to separate fact from fiction, maintain clarity about the public interest and respond timely, forcefully, and clearly. Above all, leadership is called for.

4. It is folly to deal with chemical risks on a case-by-case basis because the dynamics are too dicey. Only over time can we hope to change perceptions of chemical risks, the rules of the debate, and the societal response.

5. We all need to work to build confidence in our Government regulators and regulatory systems. People want to have confidence that the control mechanics work to provide consistent meaningful standards and review. Of course, the agencies themselves are the central focus in building confidence because here rests the greatest public expectation and the greatest believability in confidence-building communication. Chemical registrants, users, the press, and the public are other segments that can measurably contribute to the process. It is up to the agencies to pull these interests together.

6. In my personal opinion, FIFRA needs adjustment to allow a rational process by which suspect chemicals can be removed from the market during the period of scientific review. Furthermore, chemical users need to be directly included in the registration deliberations and negotiations because oftentimes they have more at stake in the decision than parties already involved—the agency and

the registrant.

7. Agricultural producers, chemical producers, and Government will become more sensitive to consumer perceptions, validating the need for participatory attention to food safety issues.

8. EPA, State agencies, farmers, the chemical industry, and the scientific fraternity need to develop more proactive long-term public education and risk communication initiatives. The agriculture industry, in particular, needs a strategic long-range perspective about public education to significantly contribute to public wisdom about chemical risks and benefits. These efforts have to be sustained, and in language that is meaningful. Moreover, factual information will not have to address only the scientific and regulatory questions, but also satisfy the public's sense of validity, importance, and meaningfulness. For example, a 1-percent marketbasket sample of produce may provide a statistically accurate picture of pesticide residue violations, but it hardly qualifies as believable or meaningful to the public.

9. A rational voice from food producers needs to be heard if balanced opinions are to be formed. It is foolhardy to ignore public anxiety. Its existence has to be validated and dealt with. If unattended, these attitudes can inflict serious damage on product marketing.

A practical conclusion is that crisis management plans are important, but of limited value in directing day-to-day decisions and operations. They are useful in identifying resources and audiences, strengths and weaknesses; in anticipating problems and deciding on contingencies. They should not be expected to provide pre-set responses in a very dynamic environment.

Of course, the overall strategic conclusion is that today we risk the loss of safe chemicals, which will result in increased food prices, heightened malnutrition, and a loss of markets to more efficient international producers. The increased burden of regulation will result in the cancellation of useful chemicals that manufacturers cannot preserve due to financial constraints. This will have a pronounced impact on the nutritional and economic health of our country.

We doubt if the exact same scenario of the Alar experience will be repeated. It was a unique coming together of factors that amplified the problem well beyond reason. But other difficult tests are sure to come.

As we deal with them, we will acutely remember that the burning issue is not the reality (or myth) of chemical risk but rather how society determines risk. The answers lie in the communication process.

FOOD SAFETY: A Role for Bargaining Associations

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California has been a leading activist on pesticides since they first became political, environmental, and public issues. From the early 1970's, California was active in the legislature and the public was active to varying degrees concerning pesticides. This predated the Environmental Protection Agency (EPA) and most everything set up in EPA was accepted, followed, and paralleled pesticide programs that had originally been devised by the California Department of Food and Agriculture.

Involvement of commodity associations and bargaining associations dates from 1975. The California Tomato Growers Association probably was the earliest and most involved State agricultural organization. Of course, we only wish it were as simple now as it was in 1975 concerning the role of bargaining associations or commodity organizations. There is little advantage to anyone other than you folks for getting involved. I will mention a few ways and add one or two more points about involvement by your commodity or agriculture organizations.

About 5 or 6 years ago, the California legislature got involved in rewriting pesticide registration and data requirements because of the huge frustration the public and the environmental and health advocates got over EPA not going far enough.

California moved forward in successive years with several pieces of pesticide related legislation. Then, reluctantly, agricultural organizations started to move more into the issues. That was usually the role of negotiating the legislation forward, and it was a tough decision for some to see themselves as a necessary ingredient in the political process dealing with pesticides. Pesticides were considered just one of their tools. All of a sudden, the people most responsible for those pesticides, the chemical companies, were either disinclined or if inclined in the political arena were absolutely and totally ineffective, if not countereffective just by their own labels.

Agriculture started to move forward as California moved into its now famous AB 950s and 2021s. It was a negotiating role. We were involved, and there was room for more involvement of agriculture organizations than some of the commodity organizations. Here, again, tomatoes was one of the leaders.

We have moved into a different dimension the past year or two in California as the food safety issue, as it's now labeled, seemed to move forward. It was apparent that things offered were going to be extremely drastic in the California legislature and just being responsive was not going to be effective enough. Those things were not going to be politically stopped in the face of the public clamor for food safety.

So agriculture did, really for the first time on a tough issue, what it talks about all the time but seldom does. And that was to get truly proactive.

Every one of you has heard, and frankly probably every one of you has said, "Guys, I hate being responsive. Agriculture is always talking to itself over the back fence, in the coffee shop. Why don't we do something? Why don't we get on the lead?" Well, two or three lead organizations in California agriculture said a year ago that they had to do that and framed certain legislative bills to counter legislation in the California legislature being trumpeted by guys like Willy Conley, Tom Hayden, and the like.

What happened then reflects the transition to the "what-can-we-do" issue. In the course of one legislative year, all of a sudden the agriculture-sponsored bill, a legitimate undertaking, got all the editorial support. We got the backing of health groups. We were enjoying an unprecedented coalition within the legislature ending with the agriculture bill passing with only one dissenting vote. The other bills that were going to surely go through the legislature were stopped dead in their tracks as you offered up a proactive responsible position in agriculture. We, for the first time, totally diverted editorial legislators, public opinion, and health activist groups to our position. It was frankly a risky thing for the agriculture organizations that took the lead. But there probably has been no agriculture success in California in the public forum or legislature like that effort.

There are, therefore, potential wins and potential favorable coalitions that can be made when agriculture takes the lead on some of these extraordinary sticky issues and moves forward.

The issue, now, as we all know, is labeled food safety. What does that change? That is our issue. What you have been peddling is safe food. This isn't a pesticide issue. The pesticide issue is somebody else's. This is the food safety issue. That's your issue.

You not only have to be involved in that issue, you want to be in the lead. You don't want Meryl Streep framing the public agenda on food safety. You want to be casting the direction of public opinion and the position of public policy and the confidence of those consumers you're selling to. This is your issue, and it's in several different forums. I mentioned the legislature. In the public forum, we're facing serious initiatives in California.

Similar to Alar, the issue is not just in public debate, in the halls of Congress, or in the scientific channels. It is also at the customer level, the consumer level. It is just not battling the scientific issue and winning it in that forum. We have to win it in the most difficult and most unfavorable forums of all, and that's in the minds of our handlers and buyers and the ultimate customer.

Thus, what we're dealing with here is that image becomes reality. That image to the public and the image of that broker who is deciding among the different commodities and the different labels, the mix — that image in his mind is what is going to control the stage. One thing that became a reality this past year in California, partly off the Alar issue, partly off some other things was a huge loss of customer, as well as consumer, faith. There were major interruptions in the movement of a lot of fresh produce. There was a greater risk that the loss of faith could have extended quickly to the processed commodity sector. Richard Garbinian (?) talked about the fragility of the whole industry based on images or bad actions or other things. We're a little more frail than we wish we were. We found that out in California as customer and consumer confidence got interrupted.

Now, what is the role of bargaining associations, which in large part are the leading if not only commodity organizations that worry about your commodity? What are some of the things you might consider doing? What can you do? You have to ask yourself: What are we doing in our commodity to seek proof that our food is safe and what are we doing to improve both the reality and the image of the safety of our product? We are not hearing that food safety is a swinging political pendulum. There is not going to be the day when all of a sudden somebody doesn't care if the food is safe.

This calls for a long range and deep dedication. Who is going to work for your commodity if your organization doesn't? Think about it. Who else is going to do it? Whether we're a freestone peach, a hazelnut, or a tomato, we must stand up and do it ourselves. Do you think the chemical company is going to be the horse to ride? Do you think the university, in self-promotion in some way, is going to move into the lead? Who is going to solve that potential and blooming problem if you're not the one doing it? In fact, the answer should be clear that there is only one place activism in this area can be counted on, and that is by your commodity organization.

Some things that are worth thinking about. And some commodity organizations, tomatoes come most to mind, are doing a few of these, but there's more that we all can be doing.

Some of the things that I would recommend, having been involved in these fights for some time, and deeply entrenched in them in California, concerns the "prove" side of the equation. How do we prove our food or prove our commodity is safe? The first thing you have to do is to know definitively what is the pesticide usage, its nature, and timing, and other elements that go on with the commodity.

You get some assistance if you're in a State like California with considerable agency control. We're improving to where next year we will have a regulatory program of full pesticide use and enforcement. So, we have an edge there in California on some of the rest of you. But, before we got that system totally in place, and some controversy was coming on tomatoes and other commodities from the NAS study, the Tomato Association undertook the most extensive study on pesticide usage on tomatoes that it could do and it far and wide exceeded anything otherwise known on pesticide usage on tomatoes. It became instantly the document that both the Federal and the State Government started to use to render real judgments on pesticide usage in California.

On tomatoes, and every commodity, we should know exactly its pesticide use program. Data are our only shield against unwarranted challenges are never a sword by which we fall on ourselves. Data are a defense shield to goofball challenges, whether they're unsupported or whether they're in some of the funny signs that Laurie Mar and some of the NRDC folks do. You need to know the pesticide usage with precision in your commodity.

Then, you need to consider trying to determine from that usage exactly what the pesticide residue is. Once you know your pesticide usage, I would recommend trying to divide pesticide use into categories of preplant, dormant, prior to fruit-set, subsequent to fruit-set, and post-harvest. Then, I would undertake some studies of those known usage conditions to get credible residue tests to determine what's there, if anything, in detectable levels at the time the commodity moves into channels.

Some of that data may be available from what has been required as part of the original pesticide registration with EPA. But you might scare yourself when you undertake that type of review by finding the data too fragile or too stale. That should concern you if you found that out, and you should seriously consider undertaking and getting that type of data updated on your commodities. Because you don't know when your commodity is going to be the next favored pesticide to get attacked.

It is seldom that we're totally surprised. We can see challenges coming usually 1 to 2 years ahead. You should be prepared across the board. Once you have usage levels and residue data, you can reach beyond where associations have gone. There's no reason that working with consulting toxicologists, you couldn't have that residue level analyzed from a toxicological standpoint so you're armed with not just the pesticide data but also the health impact data. So, if that issue arises in your commodity, you are armed with not just the data to defend yourself publicly, you're armed perhaps then with data to immediately deal with the regulatory agency as it starts to respond. Tom said it took some weeks, even in Alar, to restrain the judgments of the agencies. Nothing says we can't think ahead of our problems, with specific data and information. What we also need to do, and this is a little beyond the capability of associations, is to develop a general monitoring program of commodities.

Let me tell you how fragile or thin those monitoring programs are. The California program on raw commodities in the Department of Food and Agriculture and the Department of Health Services through political activity in the past year or two will get sampling up to probably a little short of 30,000 in CEDA and 8,000 in Health Services.

The Federal Government only does about 12,000 or so samples nationwide,

and more than half of that is in California. We don't think we're going to be adequately monitoring in California in a year when we'll be able to count in excess of 40,000 samples taken from commodities. The rest of the Nation can count about 6,000. Somebody ought to be concerned about that. And you ought to be talking to agencies on upgrading the monitoring system.

Monitoring in itself does not make one piece of food any more safe. But it certainly allows a basis of confidence, whether it is legislative or with consumers or customers, and it is one of the things in the polling that we have found raises the confidence level of the ultimate consumer more than anything else. The notion that at least the Government is finding out what is there is of some comfort. But if the public doesn't think anybody really knows, that is a grave concern. And monitoring does not affect us at the farm level or the sales level in a negative way.

If you are in a commodity you truly believe you are at an economic disadvantage because of importation and residues you believe are on the competing imported product, there's nothing that says you can't undertake either as a commodity organization, working with your university or other ways, a system of residue sampling and testing. Of course, if we find the importation of residue of an unregistered material, there is already, even at the Federal level, plenty of authority to do something about it. The level of testing is not such that you can necessarily think the Federal Government is finding all the residue on that competing product.

When attacks were on EPA, an official of EPA was asked about bananas: "Just take bananas. Of the shiploads and millions of containers of bananas, how many bananas do you think you have tested at the Federal level?" He said, "Well, I don't know." And the questioner said, "No? What's your best guess?" And then he said, "Well, we probably tested maybe two bananas." And the questioner said, "No, you tested one banana."

I picked bananas not only because I could cite more, but because I didn't want to pick on one of your commodities. If you were a banana producer here, and you thought the banana producers in Honduras were competing against you, if you're waiting for that one test and happen to find it out to make your case, you might think of doing something yourself rather than sitting idly waiting for that to occur.

The last area on data, and this one is going to be of blooming importance, and particularly for the specialty commodities we really all are, has to do with the data base that supports registration. Every commodity organization in this area ought to be, once it identifies pesticide use throughout their commodities, dealing with the registrants and the regulatory agencies to determine exactly what that data base is in either EPA or California CEDA.

California is far ahead of the Federal Government. Part of the new proposed program that Jack Parnell is crafting for the Federal Government moves us forward, but that's going to be a multiyear, 9-year project. You can't wait 9 years to have your pesticide supported with a full data base. What you can do about that is to encourage CEDA and EPA to move your pesticide commodities to the front of that data call-in procedure, and you can encourage your pesticide manufacturers to complete that data base. Without that data base, you're subject to being damned by the unyielding allegations of our challengers.

Down the road, California's and EPA's registration requirements and data call-ins will get tougher, particularly in specialty commodities. Economic decisions will be made by the chemical companies, such as: "If it's going to take me $2 million to do this 4-year dog feeding study, it's not economically feasible to maintain that registration for kumquats. If that's a really important chemical for kumquats, there is a day soon ahead, because some of the chemical companies we're dealing with are talking with us in just these terms, that there is going to have to be a joint venturing between user groups and registrants to share the economic burden to generate that data. In exchange, comes an opportunity to be a part owner in the patents and the trade value of those pesticidal commodities.

That is coming.

All that activity had to do with the "prove" side of the agenda. As to the "improve" side of the agenda, what can we do to truly improve the residue and food safety situations. I have a few thoughts.

On the improve side of the agenda, and some of this may sound sacred, you ought to be saying as a commodity group that once you have identified the pesticide usage, really ask the question: Why do we use that pesticide? Get to the "necessity" part of the equation. Do we need that pesticide because of serious economic and quality considerations? Or is this something that instead we ought to review the level of our quality standards. It doesn't fit all cases but in some cases maybe we can start reducing the pesticide-use level.

It is most appropriate for bargaining cooperatives to be involved in that side of the agenda, because you're the one working with the other half, the processor. You are the ones often dealing with the deductions and describing what will be considered off-grades. That's exactly where that equation has to be reviewed. It's not only proper for you to be in that, you're a necessary ingredient in that analysis, and probably a necessary ingredient for purposes of even motivating that review.

Consider what alternatives to that pesticide are out there, particularly as you turn the focus on the pesticides of greatest concern. As to commodities that have active IPM programs, you ought to be analyzing whether they're fully upgraded and can be improved. For those of you who don't have active IPM programs throughout your commodity, ask yourself where you've been the past 10 years. You're a decade late. That ought to be moved forward with the greatest zeal you know how to exercise. That is something you can do within your association, and something you can motivate within your industry, or the universities, with the processors, etc.

Once the IPM programs are there, a huge role you can play is encouraging their full and complete use. Importing that knowledge into use is something that you can do better than the associations and producers that are there.

As far as focus on pesticides is concerned, we all ought to be doing that. We can get somewhat surprised when our opponents pick their favorite pesticide for attack on any particular day or any particular season. But there has not been an attack on a pesticide where we have said, "Holy Cow, nobody has been talking about that pesticide. What a surprise."

We've known the direction of travel of these things for some time. We knew about EBDCs 6 or 7 years ago. In California, we have known them with great focus in the past 3 years as we have moved into Proposition 65. That was no surprise. And if you were a specialty commodity using

EBDCs, you would know that it was in review. You would know that it was likely to be one of those registrations dropped from use. This isn't a surprise maybe at the field level, but it was a surprise well within the knowledge and capability of those involved. And every pesticide ought to be assessed in terms of vulnerability.

As to the initiative we're facing in California, parts of it have been written by the leading environmental activists throughout the Nation. And the leading environmental activists throughout this Nation have said in many of their writing something that we all know to be true. There are two places to control the Nation's pesticide agenda: Washington, DC, and Sacramento, CA. Every time we don't see Laurie Mar, I know where she is — in Washington. And every time leading activists aren't there, they're generally in the other place, unless they have a hot issue to transport elsewhere. And unfortunately for Tom, we had one in Alar that did export from those two focuses. But where the action took place was Washington, DC, in the regulatory arena.

You should focus on any pesticide usage that you have that is on EPA's A list and next on EPA's B list. Those are known lists, and we know the direction of travel. Those are the cancer causers. Then you might have to do a little more study or review to get to the reproductive process, for which there is no list.

California is the only place agencies are looking at it and focusing on it as a result of Proposition 65.

Know your hot list. Get your data together. That's on the prove side. On the improve side, start saying: How do we in the long run move away from the use of these particular chemicals? Do we have alternatives? Do we need to start with seed companies and the universities doing breeding programs for resistance issues. Do we need to work with the chemical companies relative to the onset of new registration.

We need to think in the long run. For somebody to say, "Oh, that solution would take 6 or 7 years." That's within your reach. We all plan to be producing these commodmities in 7 years because we plan to be able to be ahead on these issues so we're not run out of the industry within that time period.

Think in the long range, if you're dealing in science, and you're dealing in health issues, they are long-range issues. Take a feeding study. That's 4 years right there.

It's a long range fight, so feel free to consider long range solutions, contributing solutions.

As far as alternative research, California and the 2161 bill we passed last year, has considerable money for research for alternatives to pesticides. In the counterinitiative that California's agriculture is supporting, there's going to be about $5 million a year for research. Get positioned in your commodity to participate in a share of that money. If your commodity is using chloritylenol or Captan or any of the EDBCs that have a ETU problem, make sure that your commodity is on the agenda to get some of that research money. That's exactly why it is going to be there. That is something the commodity associations can well do for their commodities.

It is not beyond reach to start looking and focusing on pesticide use within your commodities. Is all this pesticide use absolutely necessary? Where isn't it? We have seen in several commodities in California in the past few years a considerable reduction in the levels of use of pesticides. The prophylactic use of pesticides is something we are going to have to get away from. Within your industry, ask yourself: Is the tolerance well known in tomatoes or peaches or hazelnuts or kumquats? Is anybody in our industry determined to use something illegally or unlawfully or improperly in some way? We are all potential victims of the worst actor within our industries.

Those of you in California remember what happened to the melon industry from pesticide residues. That problem cost untold millions of dollars because of those indiscretions. Many other examples can be pointed to. You ought to be thinking of studying industry use influence or proper activity in usage. You ought to be telling your regulatory agencies about improper pesticide use in your commodity. You as an organization want the swiftest, most direct, most severe pursuit of any illegal use. And your decision cannot be affected by any membership considerations.

Commodity associations can certainly play a important role by being prepared to respond. I don't think any association has done nearly as much in that regard as did the Tomato Association recently working with the tomato processors to form an organization to go after these issues, and to take action. Not all, however, can be prepared to fight the war when it arises. But the war is there and it's going on for all of us.

THE ART OF NEGOTIATION — TIPS FOR PROS

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I'm going to discuss philosophy and techniques for effective negotiating as you undertake to sell your products to processors. I want to begin by emphasizing the philosophical assumptions that my position of negotiating entails.

Many people negotiate from a gamesmanship point of view. The test of negotiating from this perspective is that I win and you lose, and that the most effective negotiation occurs when I win bigger scores than my predecessors have ever won and when you lose in a bigger way than your predecessors have ever lost.

The approach I would take to negotiation is exactly the opposite. I believe negotiation must be viewed as a communication activity, in which you pursue not win/lose but win/win negotiating techniques.

Win/lose negotiation only embitters people you're doing business with, and makes future negotiations more difficult. It distorts the potential for a long-term successful business relationship that furthers the interest of both parties. Win/win negotiating attempts to build on the negotiation process and makes each ensuing negotiation less painful, less hostile, more efficient, and possibly conducted in the shortest amount of time.

Win/win negotiation builds an expectation of a continued business relationship with pleasurable and trustful and ongoing association. The question then is: How do you pursue win/win negotiation? You do this by grounding the negotiating process in solid communication.

The first recognition that has to occur is that when you negotiate on behalf of your product you are presenting yourself and your product as professionally and strategically as you can. That means you enter into negotiation in a way that communicates you are prepared, you are knowledgeable, and you are confident. And as a prepared, confident, and knowledgeable negotiator, you anticipate being accepted as such by the person with whom you are negotiating.

Second, win/win negotiation involves the recognition that negotiation is fundamentally a two-way process. It involves communicating your position and it involves listening to what the other person is saying. Too many negotiators talk too much and listen too little. And when they do listen, they often don't listen carefully. They react immediately to the first words out of a person's mouth, rather than listen systematically, critically, and analytically.

I encourage you to develop listening skills to take you beyond simply hearing words coming out of a person's mouth. Instead, listen for the strategic decisions that are underlined, the arguments that person is making. This kind of listening involves being aware of nonverbal, as well as verbal, factors that influence the communication encounter.

Position yourself in a negotiation situation so you're able to look the person with whom you are dealing directly in the eye. Try to create an environment free from as many distracting situations or background factors as might be possible. Make sure you try to negotiate in a quiet and comfortable room as opposed to a noisy room or a public place where there's a lot of activity. Try to make sure that the persons involved in the negotiation process are as much as possible kept to a minimum. It's much easier to negotiate face to face with three or fewer people in a small room, a close intimate situation, than it is to negotiate at a long table, with a

lot of different people, several of whom may be leaning over talking to each other, exchanging notes, or doing anything other than focusing on the messages you are making while the negotiation is going on. Aggressively take control of the environment so you are in a position to know if that person is listening to you and you are in a position to listen.

Now, how about preparing for actually engaging in the negotiating? As a negotiator, you need to ask yourself several questions. The first and most appropriate is: What is my precise authority in this negotiation? To what extent am I free to make the deal in this setting and to whom must I answer after I make such a deal? What authority do I have? Who is the constituency that I represent and how will this constituency feel about a deal I make? In other words, what will satisfy this constituency? What do they expect? Their expectations will of course be shaped by their needs in the situation they're in. But they're also going to be shaped by a sense of history that they have with regard to prior negotiations. Prior negotiations develop in one's constituency a sense of expectation about each ensuing negotiation encounter. So you need to know what happened in those prior negotiations and what their reactions, experiences, and feelings about them and their effectiveness were, so you'll be able to predict what will satisfy them in this encounter.

Second, you should ask yourself: What do I want? What would an ideal negotiation outcome look like for me? And then, more realistically, what would I need as minimum outcome for this encounter. Anything that occurs between your ultimate wants and your needs is likely to be within a range of a satisfying outcome for you as a negotiator. Obviously, the closer you can go toward wants as opposed to needs, the happier you will be. But, if you go into your negotiating encounter with a clear idea of your wants and needs and an ability to distinguish between them, in short, what constitutes "frosting on the cake," and what constitutes "bare bones necessity," I think you'll be more satishfied with the outcome.

The final question you should ask yourself is: Are my needs and wants realistic given this situation, and how do I balance them between short-term and long-term goals? Sometimes as a negotiator it's in your interest to surrender short-term goals in the pursuit of long-term business strategy. But research in negotiation suggests most negotiators don't go into a negotiation encounter with a clear view of what long-term goals are. They are always bargaining from a short-term political interest and consequentially sacrificing long-term interest that might put them in a better bargaining position in future bargaining encounters.

Just as you must think about your own needs and wants, authorities, and constituencies, it's useful to begin the negotiation process by thinking about your vendors' needs and wants, constituencies, and authorities.

One of the more frustrating things that can happen is to be involved in negotiations and close to making a deal, only to have the person you're talking with suddenly back away from the deal and say, "Hey, okay, now I'm going to have to take this to my people." And you respond: "Now, wait a second, I thought you were here to make a deal and you were prepared to sign something today." And the guy says, "No, I've got to check it." Now, he's got you in a vise because you revealed your hand, you showed him what you wanted to settle for, but now he can play you off against someone else. It's like going in to buy a car and you get a nice friendly salesman, you think you're ready to go, and then they ask the hostile sales manager. It makes you feel pretty bitter about the whole process. So, you've got to know before the negotiation begins what authority the person you're talking to has, if actually he or she can close a deal.

The question of authority also leads to the issue of constituency for that person. Who must this person satisfy? Who is he or she speaking on behalf of? Are there shareholders who are unhappy about past negotiations? Are there processors or subcontractors who need to have product delivered at a certain time? What are the authorities and the constituents who are making claims upon this person? Then you need to ask yourself, "What does he or she want and need, and

how does that compare with what I want and need?"

In a satisfying negotiation process, both parties are going to be able to deliver a contract that satisfies something they want and something they need, which you strategically have to figure out how you get there in advance.

Do your homework, and by that I mean you've also given some thought to how you actually go into a negotiation encounter. Some people approach the art of negotiation as if it were a war. It's a hostile kind of encounter. The idea is to make the negotiation process as uncomfortable as possible for the party or person you are negotiating with. It's get in there, get out, take no prisoners kind of activity. That type of approach is not as effective for building a long-term or continuing negotiation process.

Instead of that approach, I would suggest this:

First, be friendly, professional, businesslike. Disarm the person with your friendliness as opposed to your hostility, because it may be harder for that person to take the very top bargaining position with someone who smiles easily and responds in a friendly manner to proposals than with someone who bristles and acts angry.

Second, take the time in any encounter, in any negotiation, to try to get the process on the personal level. Time spent in developing a personal relationship with the person you're dealing with will be helpful in working out any problems that come up later in the negotiation process. So, take the time to be personal. Talk about things that may not seem that important to closing the deal but may help you develop a continuing relationship. Don't view the other person as the enemy. Instead, view the other person as a partner in building a business transaction.

And finally, establish your confidence. The best negotiation technique any negotiator can have is to communicate in a clear and forceful way your knowledge about the product you're trying to sell. If you know what the product is and you know what the criteria for determining quality in the product is, you know what are the costs of producing the product, you know what the history of exchange of this product has been, you'll be in a far more effective position to begin negotiation. Don't be in a position where the person you're negotiating with is telling you about your product. That's inexcusable and it's doing a great disservice to those people whom you represent.

As part of the preparation and homework process, try to assertively define the issues that will govern the negotiation process. As much as possible, if you can, begin the negotiation and continue the negotiation by defining the terms that are going to be discussed. If you let the person you're negotiating with define the agenda of issues, then that person is going to be more or less defining the scope for what's happening in your conversation. But if you're prepared to have six issues you want to see addressed and you systematically and methodically pursue those issues in the conversation, then that person is going to be talking about things you can control. And in any communication encounter, if you're controlling the agenda, then you're controlling the things the other person is forced to think about when he or she reacts to the conversations you have made. It's a strategy that political candidates have been using for years. They initially poll to see what the public wants to hear from a political leader, and then they construct their messages. The worst thing for a political candidate is to be forced to respond to issues coming from the floor that the public wants to talk about and he or she is not prepared to talk about them. So, you want to control the agenda for negotiation.

You ought to think about how you want to bundle the issues. If you've got five or six issues — price, grade, quality, delivery schedule, or anything — think about how you want to put those together so you're packaging them for the negotiation as opposed to having the other person decide how to package them.

Brainstorm before the negotiation process begins on potential concessions or compromises you would be willing to make. The worst-case situation for a bargainer is to be forced to think in a bargaining discussion when things get heated

about alternatives you haven't had an opportunity to think about before. That's when you're really vulnerable and you make a mistake. If you think about what concessions you might be willing to make before you have to make them, then you can weigh the alternatives. In fact, talk about them with somebody before you go into the negotiating meeting.

Any of you who have been involved in negotiation will know it is not a natural skill for most of us. It's something we acquire from having done it. And if you practice and think in advance and carefully prepare, you'll do it more effectively.

What are some human factors that affect your ability to negotiate? These are some things to think about because they will affect your performance. Also, they might be factors affecting the performance of the person you're negotiating with.

First, illness. If you've got a headache, you're not feeling great, then you're not thinking as clearly. Try to put off negotiating, because you're not going to be nearly as effective if you're not able to think quickly and be at your best.

Try to put aside personal problems. You had a fight with your wife that morning or your husband, or the kids are driving you crazy, or little Susie needs braces and you're worried about how you're going to pay the dentist. If that gets in the way while you're trying to think about these other things, you're going to be in trouble.

Consider your ego. Your friend, John, might have negotiated a contract a week before and he did a beautiful job. You know you have to do as well as John did or you're not going to look as good as he did. If you're thinking of this encounter from a personal view — I need to gain or I need to win to be equal to some other person in the organization — then you're going to be at a disadvantage. Fear of failure is a terrible, terrible thing for a negotiator to have to deal with.

So, think about those human factors, not just because they affect you but they may account for why the person you are dealing with is negotiating in a certain way.

What are some things that you cannot do if you're going to negotiate effectively?

First, you cannot be over prepared. Any time spent in preparation is time well spent. And that means if you normally take 20 minutes to plan for a 15- or 20-minute meeting, double that amount of time and go and see if you're not more effective.

Second, as a negotiator, you cannot ignore the give/get principle, which means you never should be in a situation of giving anything up if you're not convinced you're getting something in return. It's just a basic principle of bargaining. You might give up on something long term to get something short term. But in your head, there should be a balancing calculus — for everything I give up, I need to get something in return. Because that's what a shared win/win negotiation is based on. If you're constantly giving up, giving up, and giving up, and not getting something in return, then you're going to leave the bargaining situation unsatisfied.

By the same token, however, you need to acknowledge that the person you are dealing with also needs to get something in return. So, that is the exchange theory of bargaining.

Third, do not become impatient. Anybody who goes into a bargaining situation saying, "I've got to close this deal by 4 o'clock today," or "I've got to close it by Friday," or "We've got to have an answer on this by Monday," is at a disadvantage. Because the person you're dealing with may not be under the same time pressure. And so the time becomes a strategic benefit for that person and a disbenefit or cost for you. Act like you've got all kinds of time. The odds are you will put the other person in your time pressure, impatient, and squeezed to make the deal.

Don't lose your temper. It's a perfect bargaining technique for the other guy to get you angry. Because the moment you're angry you're not thinking strategically and you're shooting from the hip. Cause the other person to lose his or her temper if you must but don't lose your own. Try as much as possible to stay cool and detached. Whenever the person across from you isn't mad, it should signal you to stay calm.

Avoid talking too much. The more you talk the less opportunity there is for the other person to talk. Silence is not an enemy in a bargaining session, particularly because some people feel so remarkably uncomfortable with silence. And if silence occurs, they'll try to fill it by saying something. And the more they say, the more they may give up.

Avoid arguing. Instead, think about your role in trying to influence someone. Making arguments is of limited effect. We have to work in convictions, and beliefs, and constituencies, and political interests with the person you're negotiating with who has constituencies, and beliefs, and political interests. And you're not going to convince the other person. Both of you are pretty much locked into your way of seeing the world. So, instead of trying to convert your opponent to seeing the world as you do, try to win influence with that person for the issues you represent and the people you represent. Your negotiations will be more effective.

Every concept assumes you can negotiate in a happy, supportive, positive, win/win environment. It all sounds really happy and positive. And we all know that we've done it. But a lot of times that's not the way it is. Sometimes, even if you're as positive, as upbeat, as professional as you can be, the person you're dealing with is just a big pain in the rear and absolutely refuses to meet you halfway or to deal with you in the same positive, supportive way. There are several different kinds of hostile negotiators, and I want to focus on four to give you suggestions on dealing with them.

First are bullies. A bully is literally that — somebody who just wants to yell, threaten, attempt to intimidate you, use as much power as possible to force you to back down.

A second is an avoider. This person will procrastinate, hide out, avoid any interaction, not talk about key issues. Any time you bring up a key issue, this person will say: "Well, I'm not really prepared to talk about that right now. Let's talk about this instead." Or, "Well, I'm just not sure on this one." They don't want to talk about every issue that's a sticky point.

A third is a withdrawer who not only avoids the key issues but emotionally withdraws from everything. This person literally goes dumb in the negotiation process. You'll make an argument and the response is: "Well, I don't know. I can't tell you what will go. What do you need?" This person won't give you any basis for making an argument.

The last are high rollers. For want of a better word, I call them this because they make really extreme demands and then won't budge, even if they can't justify them. They'll just say, "Well, I need this," or "I'll pay you that." They'll make these extreme demands and then say no more about them.

Even though these four different types — bullies, avoiders, withdrawers, and high rollers — represent different negotiation problems, the solutions for dealing with them are pretty much the same.

First, get their attention. If you can't get their attention, nothing effective is going to happen. Get their attention by not immediately backing down or permitting them to continue using this strategy. You need to make them accept you as a person, not as an object. Some form of confrontational negotiation strategy is going to be needed. You might want to say explicitly, for instance, "Why in the world are you making such a preposterous threat? You know that nothing in the history of our negotiation would substantiate that kind of price and I cannot for the life of me understand why you're making that now." Confront directly: "Why are you trying to bully me? We can't have an effective negotiation session if you try to intimidate me. Obviously, I can't respond to that kind of argument." Don't ignore the situation. Don't pretend you're not recognizing it, and just go on negotiating the way you want. Directly confront whatever behavior it is that upsets or concerns you. Don't be intimidated, or you will begin to lose control of the negotiating situation. Be quiet and firm. Don't raise your voice so you're yelling at each other or don't start avoiding the issues and instead try to force the other person to back down. Quietly and firmly confront whatever behavior is bothering you.

Second, some people use extreme negotiation techniques because they don't feel safe in a negotiation encounter. They're threatened, or insecure, and their insecurity causes them to respond that way. So, you may want to diffuse tension by spending a bit more time on the personal side of the negotiation encounter, or by taking a break from the negotiation so the other person may feel more safe and secure. If that person feels threatened, he or she may be less willing to close a deal that's helpful to you.

Third, insist on fair principles. That means you need to treat others fairly and with respect, but they should treat you fairly and with respect. They shouldn't try to bulldoze or snow you and you shouldn't try to bulldoze or snow them.

One prominent theorist has developed an interesting theory of argument that I'll share with you. He said arguers could be described in three ways. Some arguers are like rapists. They literally try to win in an argument by fluster and force; they coerce compliance. That's obviously not a very good argument technique. Some arguers are like seducers. They will say whatever you want to hear and then try to get what they want through argument by tricking you into something you really didn't want to do. But he said the best arguers were like noble lovers, the platonic ideal, because they argued out of respect and a healthy sense of commitment to the person they're dealing with and with a sense of integrity. They give a healthy view of the argument.

If that strategy doesn't work, then invite these people to explain their position, to substantiate their view. That means you know they're making these preposterous demands and you just can't get anywhere with them. So you say: "Okay, I want you to substantiate the offer you're making and tell me why you think I should accept it. Give me the arguments I would need to go back and sell that price offer to my people." Force them to take the burden of proof for the argument. As they do that, you can sit back and flaw their arguments as they develop them one by one. Rather than you making the negative case, try to get them to make the negative case. At the very least, it might disarm or surprise them.

Don't be shy about breaking off negotiations if you're dealing with a intransigent person. Take a break in the action by saying: "Well, I'm going to need to get back to you, we're getting nowhere." Don't be afraid to ask a direct question: "What are the assumptions behind the arguments you're making?"

Finally, don't be afraid to point out the consequences. "Okay, if I negotiate this and we close at this price, here's the effect it has on future negotiations, and here's why that's undesirable and why you should not force me to deal in this way."

I told you some things you might do to prepare yourself and things you might do to avoid a hostile negotiating encounter and how to take control. There are some final things I want you to think about as you prepare to negotiate and as you begin the negotiating process.

First, don't be afraid to go watch someone else negotiate a contract whom you know is really good at it. You may not be able to emulate that person's techniques because negotiation skills, like most other communication encounters, are uniquely personal. But you can certainly pick up tips by watching an effective negotiator at work.

Second, don't be shy about practicing. Assemble three or four of your friends from your office in a room and give them the role of the opponent. The more you know about your opponent you're going to be negotiating with, or your business adversary, the more prepared you'll be to get these people to develop the technique for making the arguments you expect to be hearing at the negotiating encounter. And if you're prepared, then you can be effective.

Know as much as possible about the actual people you'll be dealing with and what their habits are, what negotiating techniques they use, and you will feel more comfortable about the negotiation encounter.

Third, don't be afraid to take satisfaction from the work you do. And I mean

this. It's difficult, sometimes, when you've been in a negotiating encounter to feel really very good about what you've managed to achieve because you've virtually never achieved everything you hoped to get. And because of that, it's easy to run yourself down and not feel as effective as you might have been. Instead, try to look at the encounter in terms of the good things you did achieve and develop a positive sense of self about what you've achieved. Then you'll be more effective in future encounters. If you have confidence in your own ability to negotiate effectively, you will negotiate more effectively.

Last, if you have confidence in what you've achieved for your customers and your clients, you'll be able to sell them on the contract you've achieved a lot more effectively. And as anybody who has negotiated knows, a big part of the selling job is taking it back to the people you are representing and convincing them you have in fact delivered them a good contract.

DIRECTORS: RESPONSIBILITY, LIABILITY, OPPORTUNITY

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In my view, one of the bigger obstacles to the success of a cooperative can be a board consisting of mushroom directors. Mushroom directors are directors who sit around in the dark and let others dump manure on them. If nothing else, I hope this article will encourage cooperative leaders to identify and either train, or replace, their mushroom directors.

Why can't cooperatives afford to have mushroom directors? While not found in any book of statutes, one of the great principles of American business is known as Murhpy's Law. Murphy's Law holds that whenever something can go wrong it will go wrong, and in the worse possible way. While Murphy's Law probably wasn't written with cooperatives specifically in mind, it surely seems to apply a lot.

Sad to say, but all too often the things that do go wrong could have been avoided, or at least the damage controlled, by careful planning and preventive action. Certainly this is true of many decisions confronting cooperatives.

The worst time to try and sort out a problem is after a dispute has already arisen. Tempers are short, emotions are high, and everyone feels treated unfairly. It can be difficult to get the people involved to be rational and "cooperative."

Being selected to lead a cooperative, either as a director or as a manager, can be a gratifying experience. But being a leader is also a serious responsibility. You must act according to a certain code of conduct. Failure to do so can harm the cooperative, and expose you and your colleagues to personal liability.

To manage a cooperative to avoid legal liability, leaders must understand three basic concepts:

- The legal nature of a cooperative. A cooperative is a business, organized under a State law, usually as a corporation.

  Except for specific exceptions inherent in cooperative principles, a cooperative operates much like a profit-oriented corporation. Cooperative leaders have substantially the same role as decisionmakers of other corporations. These similarities have led courts to apply corporate law precedents to cases involving cooperatives and cooperative leaders.

- The role of directors and managers. The board of directors is elected by the membership to serve as the cooperative's governing body. The directors set general policy and are responsible for the overall management, operating policies, and supervision of the progress of the cooperative enterprise.

  Managers make the specific decisions necessary to implement the board's general policies.

- Legal standards of care required of directors and mangers. When a leader fails to conform to the expected standards of care, legal liability may result.

  An important part of minimizing legal risk is becoming familiar with the

legal jargon used to describe both the standards of care and the bases for liability.

The courts frequently refer to three standards of care that apply to business leaders and five courses of conduct that may lead to liability. They are looseley related as shown on this table.

Standards of Care	*Actionable Deeds*
Obedience - adhere to statutes, articles, bylaws	Exceed authority
Diligence - exercise reasonable care	Negligence
Loyalty - refrain from personal activity that injures the cooperative	Breach of trust, fraud misuse of assets

When deciding whether specific conduct was undertaken with appropriate care, the courts will usually apply a general test known as the business judgment rule.

The business judgment rule states the power of managers and directors to conduct the affairs of a cooperative is virtually absolute so long as they:

1. Act in accordance with their best judgment, and

2. Do not exceed their authority, act negligently, commit a breach of trust or fraud, or convert cooperative assets to unauthorized uses.

When applying the business judgment rule to specific circumstances, courts will often look into not only what the managers and directors actually knew but also at what they should have known.

As the manager's job is to run the day-to-day operations of the cooperative, the manager is almost always well informed about what is going on.

But directors usually don't have the continuous contact with the business that the manager does.

It is the duty of directors to inquire and find out what they should but don't know that makes it essential for cooperative organizations to enlighten or replace mushroom directors.

Now, we'll focus on the standards of care required of cooperative leaders and the types of conduct that can lead to personal liablity.

Obedience/Exceeding Authority

Obedience: leaders must adhere to the cooperative's articles of incorporation, bylaws, policies, and the statutes that authorize and govern the conduct of their cooperative.

A manager or director who acts outside his or her authority can be held personally liable for the consequences of that action.

The same is true when a leader causes a cooperative to exceed its legal authority and in the process injures the cooperative or someone else.

Statutes, articles of incorporation, bylaws, policy statements, and marketing agreements or other contracts all limit the authority of a cooperative's leadership to run the company as they see fit.

Leaders must know and understand the contents of these documents so they know and understand the limitations on their authority.

For example, the courts have held directors personally liable for losses suffered when a company purchased equipment that exceeded a limitation on bor-

rowing and then was unable to repay the loan.

Directors have also been held personally liable for conduct outside the ordinary and usual course of the cooperative's business, notably speculating in commodity futures, without specific authority from the members.

Diligence/Negligence

Diligence: leaders must exercise the degree of care that ordinarily prudent individuals would exercise in conducting their own affairs.

The liability of leaders of a cooperative is not limited to willful acts of misconduct. Liability can also result from negligence. Negligence is the failure to act in a reasonable and responsible manner. Liability may result from mere inaction, where such inaction is the cause of a loss.

Leaders must use due care and are responsible for the consequences if they don't. Directors must be more than mere figureheads. In recent years, courts have held directors and businesses to an increasingly higher standard of care.

The most common act of negligence is failure to examine the cooperative's books and records. A director who never makes an examination of the books to determine the condition of the cooperative is asking for trouble.

A director cannot escape liability by pleading lack of knowledge of any wrongdoing, since the ignorance is the result of the director's own gross inattention in discharging the duties a director voluntarily assumes.

A very effective tool for detecting problems is the audit report. The board should ensure impartiality by selecting the auditor, rather than leaving that decision up to management. The board should also insist the report be delivered to the directors; a system by which the audit report is made available only to management has been found to be negligent by itself.

Directors are under the greatest obligation to act prudently when they have actual knowledge something is wrong. For example, if the auditor calls attention to improper conduct by the manager and the board refuses to correct the situation, the directors have been held responsible for any losses the association suffers as a result of that conduct.

Loyalty/Breaches of Trust and Conflicts of Interest

Loyalty: leaders must refrain from activities that injure or take advantage of the cooperative.

Cooperative members have the right to expect undivided loyalty from the leadership. A manager or director cannot acquire an interest adverse to that of the cooperative, while acting for the cooperative, or when dealing individually with third persons.

Leaders should not expect any special treatment or "deals" from the cooperative not available to all members.

Leaders may enter into contracts with the cooperative to sell its property and services, and purchase property from it, provided the cooperative is represented by other executives and there is no fraud. If any such dealing is challenged, however, the burden is on the leader to not only prove good faith but also to show the deal's inherent fairness to the cooperative.

One of the more difficult conflict of interest situations to handle involves the business opportunity a director learns of because of his or her membership on the board. If the director indicates he or she will pursue the opportunity for the cooperative and then usurps the opportunity for personal gain, liability may properly result. However, if the board decides not to act, then the director is free to do so.

While not expressly prohibited by law, many cooperatives have bylaws barring managers and directors from competing with the cooperative.

Loyalty/Fraud

Fraud is a deliberate misrepresentation of the facts.

Managers and directors owe the cooperative and its members continuous honesty and good faith in transacting the business of the cooperative. It should not be surprising to learn that leaders are liable to the cooperative for losses resulting from their fraud.

Simple fraud, such as makign false entries in the company books, is generally well understood. However, other, more complex misrepresentations can also be classified as fraud.

One recent case of major significance involved a cooperative that paid members what it claimed were patronage refunds that exceeded margins for the years in question. Such payments were really coming out of the cooperative's equity and thereby defrauding lenders, former members ,and others who depended on the equity being used for stated and legal purposes. While a cooperative is usually free to return equity to the membership, it must be open and honest about what it is doing.

Misuse of Assets

Directors and managers are liable for using the assets of a cooperative for something other than their intended purpose.

Leaders must exercise care and diligence to see that the cooperative's property is not wasted or taken from it. They must not waste assets, use them to pay unauthorized claims, or by inattention permit others to seize them without right.

If a contract to purchase equipment states title to the property remains with the supplier until it is fully paid for, the directors are liable if they approve pledging the equipment to secure a loan without the supplier's permission and the lender seizes the equipment when the association defaults on the loan.

Directors may also be liable to the membership for misuse of assets if those assets are used for an illegal purpose, such as paying illegal rebates to customers, in addition to any criminal penalties that might be imposed.

If a director wants to be protected from possible liability for a questionable decision by other board members, that director must be able to establish his or her dissent from the decision.

The official records of board activity are the minutes of the board meeting. To be protected, a minority voice should insist on a recorded vote and then be sure the minutes accurately reflect his or her dissenting vote.

After a review of possible personal liability, some directors and other leaders have second thoughts about accepting the responsiblity. The matter of personal liability is a justified cause of concern. But it should not be a subject of fear or misunderstanding. Directors and other leaders need be concerned about liability only if they do not meet their responsibilities and do not act according to the rules of conduct discussed above. In other words, liability is only a major risk of the mushroom director.

AGRICULTURAL BARGAINING: A ROOKIE'S VIEW

Bill Allen, Jr., Executive Director
Catfish Bargaining Association

The Catfish Bargaining Association has to be the newest bargaining association in the country. And, probably, aquaculture in the farm-raised catfish industry would qualify as the newest agricultural commodity. So, let me tell you a little about this farming business and specifics of Mississippi catfish before I get into bargaining.

First, I want you to realize we're not selling river catfish. Mississippi prime catfish is an aquaculture product produced in above-ground ponds. We fill with clean well-water. We have the capability of pumping about 4,000 gallons a minute from an aquifer about 60 feet deep. That's why it's called the Mississippi Delta. We have a clay based soil that holds the water so it doesn't seep back into the ground or evaporate. We stock the ponds with fingerlings that we hatch. Farmers own the hatcheries. They collect the eggs. They stock the fingerlings in their own ponds. They fill the ponds and then we feed these fish a floating catfish feed that we manufacture locally. It's made of mostly soymeal and corn and wheat. It is a high-protein floating catfish feed, so we're not talking about scavenger, bottom of the river type of catfish. This is a highly pampered cultured product.

We produce a mild, delicate, white fish fillet that would hold its own with Dover Sole or Halibut, or anything else. California is the fifth largest consumer of Mississippi catfish, which is good. You all are trend and thought leaders, both good and bad.

There is an important reason why we were successful in bargaining the first time. Catfish farming, fingerling to ready-to-go fish, takes about a year and a half. We sell them at a pound and a half. But just because they are ready, doesn't mean we have to sell them right then. We can hold them for 1 or 2 months without economic disadvantage. We can hold until the banker calls in and says you need some cash. So, we don't have a fruit that's fixing to fall off the tree. That gives a direct advantage to the farmer.

Another factor is that the processing industry is highly labor intensive and there's a lot of capital overhead. Processors have to have fresh fish to supply their fresh fish markets every week. We can hold for a couple of months. That presents an interesting arithmetic equation. If we don't have too many free riders supplying the plants, and they can operate, say 2 weeks, or no longer than 5 weeks, then we've got something that will work within reason. We've got the ability to bargain pretty successfully, and if we are reasonable on prices and terms, a pretty distinct advantage.

The disadvantage in catfish is the swimming inventory under water. You talk about projected carryovers and looking at the surplus. We don't know what's in the ponds. We can seine through, know what we caught, and that there's more left. Seriously, the best indication we've got is feed mill receipts. We know how many pounds of feed we have we fed. We normally convert about 2 pounds of feed to a pound of fish. So, based on sales, and what we call death loss from what the birds and things like that eat in the ponds converted to feed mill receipts, we've got a real fancy econometric model that tells us how many fish are out there.

I represent the Mississippi Delta. We have 90,000 acres of catfish farms in

the Mississippi Delta, with about 200 growers. That's 85 percent of U.S. catfish production in about a 50-mile radius of my hometown. The catfish industry also has significant production in Alabama, Arkansas, Louisiana, some production in California, Kansas, and Missouri, and other States. So, we're looking at a different situation.

If we go to Alabama, there may be 10,000 acres of farms and 800 growers, with average farm size of 10-20 acres each, where in Mississippi they can be an average farm size of 300-400 acres, some individual ones with as much as 3,000. So, it's a highly capital-intensive business.

It takes $3,000 to $5,000 an acre to get in the business. It is not a highly labor intensive business, as far as growing catfish. It is very management intensive. We have to worry about such things like oxygen, pollution, and off flavor. You can lose an entire pond of catfish worth $80,000 to $100,000 in 1 hour at night if there's a muggy condition, when a CO2 condition builds up and the pond flips over, or algae bloom occurs. All kinds of stuff can happen. This business is very management intensive.

The processing business is extremely labor intensive. We employ about 7,000 individuals processing catfish. We're going to some automatic related changes, but processing still is labor intensive and the ramifications of increased incremental wages for our people can be costly to the industry in Mississippi, something we have to consider as time goes by.

To give you a perspective on how fast the catfish industry has grown, in 1980 we produced less than 50 million pounds of catfish. In 1983, we broke the 100-million-pound mark. In 1987, we broke 200 million pounds. Last year, we produced 333 million pounds of catfish. So, we have had a 10-year average growth rate of about 30 percent a year. We're settling down to about a 15-percent annual growth rate, or 333 million pounds. You don't just keep astronomically growing. We've had significant tremendous growth. We've had a changed perspective relative to other sea foods people.

Nobody realizes how big the catfish business really is. All the cod caught in the United States last year was under 200 million pounds. All the trout caught was about 30 million pounds. All the swordfish was 9 million pounds. All the flounder was 160 million pounds. Right now, 300 million pounds of catfish makes it the largest U.S. caught and consumed fishing product in the United States. The only exception is Alaskan pollack (?), which is a larger production, but most of it goes into processing for export.

When I went to work in 1987, catfish was in the right place at the right time. It was a natural for advertising, because American consumers were more concerned than ever about cholesterol and saturated fat. They wanted to eat lighter, low-fat, high-protein products. Catfish was a natural.

We got a truly legitimate sales story to tell. It's easy to advertise something if it is truly a superior product. Processors we have are sophisticated and I've got to credit these guys for the growth of the industry. They've gone from a steak bone-in-fish mentality to selling mostly catfish fillets, a sophisticated microwavable product — pre-glazed, marinated, and other ways a fine product. So the catfish industry has changed a lot, and I give the processors a lot of credit for that.

Another factor that I like to quote, since I was involved in it, is the catfish industry promotion in 1987. For the first time, farmers began putting up about $2 million a year for advertising and promotion. I mentioned feedmills owned by farmers. Let me tell you that the feedmills in Mississippi mean more than just quality feed for our farmers at a good profit. The feedmills have been our source of funding. We've got two major feedmills that produce 90 percent of catfish feed in the United States. They're owned by farmers. When we needed money for advertising and promotion, realize we're in Mississippi. There are no marketing orders, no provisions for checkoff points, no provisions for third-party grading, no provisions for advertising, no provisions that a processor must collect dues for bargaining, and no fair practices act. We're where you all were in 1922.

Without bureaucratic red tape, two feedmill boards of directors jointly sat down and formed a nonprofit corporation for the catfish industry, and decreed they were going to deduct $6 a ton for every ton of feed sold. It didn't matter whether you wanted to. It was mandatory. You buy the feed, you pay the price. There are no freeriders. That is how we got the Catfish Institute started. And that's where we got the seed money for the Catfish Bargaining Association.

The Catfish Institute started advertising and promotion in 1987. We were amazed with our first magazine ad, a full-page, 4-color spread. We found an agency in Dallas and a public relations company in New York and direct mail company in Florida. My job was fund manager and coordinator for all these people. We knew we had a story to tell. We had ads inviting people to send in $2 for catfish recipes. I amazed the first week when 27,000 checks came in the mail for catfish recipes.

We tried to get our New York public relations affiliate to get free press from people like the Los Angeles Times, the New York Times, and the morning talk shows. By sending spokespersons, we have been proactive in the food safety business. Everybody was knocking the fact that there was no mandatory inspection of seafood, that seafood may not be safe to eat. We retained the services of U.S. Department of Commerce to come in and do routine weekly inspections on all of our catfish processors who wanted to wear the Mississippi prime label. And that gave us a legitimate story to tell the press.

We also commissioned nutritionist Dr. Joyce Nettle, who wrote the book, "Seafood Nutrition," that started this whole seafood health issue to do a year-long profile of Mississippi prime catfish, to see what exactly our nutritional statistics were and if there were any contaminants that were poisonous. Luckily, the results were good. We were clean. We published our findings by food technologists. We were able to go to all the food journalists and we were fortunate to have front-page coverage in the New York Times.

And to not belabor the issue, we were a Cinderella story in 1987 and 1988, from a consumer public relations attitude situation. We measured ourselves through what we call AAU (?) surveys where we measured shifts in consumer demand for catfish. We thought our biggest public misconception was that we were a scavenger fish, a dirty fish, a bottom dweller. But most interestingly, the biggest hurdle we have to overcome according to consumer research is that catfish is considered a Southern delicacy, and considered fried fish by definition. Catfish, hushpuppies, and fried foods are not necessarily nutritious. And the reason we want to buy fish is to lower our cholesterol and our saturated fats. So, showing the versatility of catfish, showing the broad application—the sauce application, the fricassee application, grilled, barbecued—is where we spent most of our emphasis and that really has helped us cultivate the volume of catfish sold.

With all this glowing history, it sounds as though everything's lovely in the catfish business. We've got no reason for concern. Well, I'm going to take you back to July of this past year, or August of 1989. We were looking at record sales volume. We were projecting the lowest ever carryover of fish.

Now, let me tell you something about carryover of fish. We harvest fish 12 months out of the year. So, we're in the fresh market all the time. The fish actually grow when the water temperature is high. So, we feed fish and grow fish during the months of March through October in Mississippi. Sometime in November, they get semi-dormant until spring. Whatever fish we have growing and raised in the ponds in November has got to supply the market until March, April, May. When May 30 comes, we don't want to have much. We don't want to be out of fish, but we can't stand one pound of extra fish in the pond. We've got to try to ration them out, grow them out, and start a clean crop every year, the first of June.

We were projecting this year and are projecting that in spring we'll have an extremely short carryover of catfish. Business is booming. Consumer demand is at an all time high. For some crazy reason, pond bank prices dropped a dime a pound. The reason is this. We've had a tremendous number of new entrants in

the processing business in the last year and a half. With new people trying to buy market share, we have absolutely wrecked the wholesale price of catfish. We do surveys through the Catfish Institute every month. And, ironically, we find that over the past 5 years retail prices of catfish tend to be high and stable through all our gyrations on the farm bank and the wholesale level. There's no correlation between our sales volume and retail prices. If anything, we tend to sell more fish at relatively high farm bank prices.

So, we're in a relatively artificial situation. What we do with wholesale is not necessarily what the retail buyer sees, or food service guy ordering catfish from a menu. We knew the market would support the tight fish prices that we had last year, which was 75-80 cents a pound. We see it going into the low 60s, headed for the 50s, we need to do something to stabilize the product. We started looking for alternatives. And we didn't just come up with a bargaining association as the prime solution.

What we honestly needed was a vehicle to get these processors together, all these warring processors, and get them to just say, "Look, a catfish fillet we don't sell under $2.85 a pound. It's a very simple equation that we move all the fish of everybody next month. The problem here is that it is illegal. There's no Capper-Volstead Act for the processors.

The next step was to call Dr. Randy Torgerson at USDA/ACS, who told us one of the things available to us as fish farmers was cooperatives. I want to say in all honesty when we called USDA, we didn't get any bureaucracy. We got some people who were willing to go to work with us right then and give us any sort of help or assistance we needed.

We looked at a number of alternatives. One is a bargaining association, a bargaining cooperative. Another alternative is to form a super cooperative. We have a large processing cooperative, Delta Pride. It takes about 40 percent of the catfish industry, and a number of corporate processors. We've got the ConAgra Plant, we've got the Hormel plant, we've got a lot of small independent plants—another approach to the super cooperative. We looked at other approaches as well. We realize some facts in what the man said yesterday about the Keynesian theory of short term and long term. The super cooperative may be the way to go in the long term. But in the short term we had to do something about the farm bank price right now. We thought the formation of a bargaining association, while we still had a crop of fish in the pond for these farmers to sell this year, before we run completely out in May or June is the only chance we've got to get the price up right now. So, we went to work with a bargaining cooperative.

My first mission was to come and study some of these experts in California. And I want to give a lot of thanks, sincere thanks to Vaughn Koligian for helping our board members out. They met him before I was even pegged to take over the duties. I spent a lot of time with Dave Zollinger and also Ron Schuler and just worried them to death. And they were nice enough to never say that's a stupid question and don't call me anymore. And I sincerely appreciate what they did for us. I keep forgetting about this time change, too. It's eight o'clock in the morning at home. I think everybody is up. I get Dave's number and call him and it's five-thirty, quarter of six.

After making a quick survey, we realized the thing to do was form a bargaining association. Our board of directors said let's do it pretty quick, the sooner the better. We had a head start in the fact that there was an existing organization called Mississippi Catfish Farmers Bargaining Association. We already had bylaws, we had a charter, that sort of thing. It is a farmer organization that's been in existence for 10 years. John Dillard, board president, had been president of the Farmers Bargaining Association for the past 10 years. His group had exemption through the Clayton Act to more or less get farmers together and talk about price. And from time to time, they have a meeting and say let's hold out and don't sell your fish below 65 cents. We were effective, particularly in times of summer short supplies, in keeping catfish farming profitable for catfish farmers. They did a heck

of a job. The missing ingredient was that there had never been a master agreement with processors. We could always get farmers to hold out but did not have a provision for penalizing a farmer for breaking an agreement. It was just kind of understood, a gentleman's agreement. And there was no provision for membership from other States. So, we set about at this time to hire legal counsel. And we got Gerald Marcus and Ron Peterson, who have done an excellent job.

Gerry sat with the board about 10 hours over 2 days to create the bylaws, membership agreements, proposed master agreements, all this done in mid-September.

The clock started ticking, our starting date was September 28. We had a farmer-membership meeting on September 28 called for the purpose of amending the old association into the new Catfish Bargaining Association. And additionally, to try to sign membership agreements, to take a whole new signup to get started from scratch. So, 3-1/2 months ago, there was no Catfish Bargaining Association. On September 28, we formed. The week prior, I had 17 group meetings all around the State of Mississippi, groups of 10 and 20 farmers to explain this in an hour or two at a time, let them have time to think about it, read it all over and then come back to the meeting on the 28th to take some action because we didn't have forever.

We had a very good meeting. Out of 250 farmers in Mississippi, we had about 195 in attendance that night, which is pretty good attendance for anybody. We slowly went through the changes in the bylaws. We formed the new association. We discussed membership agreements. And at this point, let me just mention membership agreements are extremely restrictive. We don't take title to the fish. We set minimum terms and provisions of sales for our members. They may only sell to those processors with whom we have master agreements. They don't know who they might be at that time. It's very scary if you've got a guy who always sold to this processor, and he says I'm not considering a bargaining association. It takes a lot of nerve and a lot of courage to sign up something now in final form evergreen contracts they couldn't get until July 1, the first possible get-out date.

We set stiff penalties, if they did not honor their contract. We've got 25-percent liquidation damages. And we plan to enforce them. We've stuck in a right to audit the farmer's books. We can take our certified public accountant (CPA) in his place and look at his books. We've got that signed into his membership agreement. We have a new provision where we deduct 10 percent per pound from his fish proceeds to fund this association. You look at a bunch of very independent fish farmers and you talk about all this at one time, it's a lot to swallow. But with a little preparation, I'm happy to report that we signed up 40,000 acres the first night, which is about 55 percent of our State. We have a provision that the membership agreement would not be operative unless we had 70 percent of listed acreage as a minimum. Freeriders could absolutely kill us.

The deal in catfish farming was sketchy. You could do very well if you were never less than a pound from your competitors if you could be on schedule and move in a very timely manner whenever you're ready to. Freeriders absolutely have got the right to do that. So, we thought 70 percent was the minimum, and hoped to get more participation than that.

In 2-1/2 weeks, we completed our membership signup. We got our 70 percent signup. We actually got about 80 percent. We now have 75,000 acres signed to these membership agreements.

During the same 2-1/2 weeks, we organized three other States: Arkansas, Louisiana, and Alabama.

That was the membership signup. That was the easy part. Then we shifted into Plan B or Phase II, which was the processor negotiations. We had never done this, and no milk processors in Mississippi had ever seen one of these bargaining associations. First, it smacks of antitrust. Nobody knows about Capper-Volstead, but everybody knows about Sherman Antitrust. Did you ever believe the farmers for ConAgra, Hormel, and on down the line, challenged our validity, our formation, the whole thing? Here's the way we proceeded with processor negotiations.

Our board of directors and I had 20 board meetings in 3 months. That's almost two meetings a week. Our 13-man board is elected by districts all over the State of Mississippi. Our board of directors took the stuff Gerry Marcus had prepared for them, the proposed, skeleton master agreement, and started hashing through the master agreement point by point and then to Exhibit A, which is a schedule of price and terms. We argued and fought and argued and fought for a week and a half. But we got through this session and had our master agreement in hand. They thought we were through bargaining. They thought this was what bargaining was.

And it almost turned out that way. This was kind of unfortunate. This was the kind of way they thought. They had given up enough, changed enough, been fair enough in their terms and provisions, and they work very good. So, when we got through with that, I sent it certified mail to all 31 processors of catfish listed in the USDA Catfish Processing Report in about 10 different States.

Now, I hate to tell you this demographic, but there are three processors that do 70 percent of U.S. volume. You've got a big cooperative that does 40 percent, and with Hormel and ConAgra those three have 70 percent. Add two more and it's 80 percent. The rest are just small, but important to serve individual members or a region. If you don't get the small one, he has a heck of a time. He's nothing to the U.S. market, but he's important to that member. And we were conscious of the needs of 20-acre members, just like 3,000-acre members.

I sent certified letters to all the processors saying basically, this is early October, like the 7th of October. Enclosed is our first master agreement of the Catfish Bargaining Association. If you would like to buy fish from our members after November 20, 1989, or during the market year, which is November 20 to July 1, you must sign the master agreement. Our members are bound by contract. They will only sell to those who sign master agreements. I'll be around to talk to you, hear comments, etc. Please sign exhibit A in the master agreement and send back in the enclosed prepaid postage envelope.

I got a few phone calls. If there was one word that characterized the mood of the processors toward what I'd just sent them, it would be the word "absurd."

Over the next week and a half, I sat down individually with 15 of these major fish processors. Basically, my negotiations consisted of sitting and listening. I was absolutely letting them tell me everything wrong with it, and taking good notes, and sincerely communicating with them. Based on that, I could do a little recount of the 15 processors' comments as I went back to the board of directors. I was able to go down the list and say, for example, on base price, here's what ConAgra thinks, what Delta Pride thinks, what Harry Simmons thinks, and on terms and conditions, this, this, and this. I went through about 25 different categories, one by one by one. Our board would go into a room and call a vote. I would say, okay, here's what everybody thinks on this. What's your pleasure? And the board would either change something or not change it. Most of what we changed was clarifying language, or small things—one was a processor service charge of 10 percent a pound. We planned to give it up in advance, and did. We do not charge a processor a service charge.

We do have in our master agreement the right to audit the processor. We can audit the processor using a third-party CPA firm, or have the processor's third-party CPA provide us with a certificate of compliance. We have 25-percent liquidation damages in the processor contract. We have a little "favored-nation" clause that says the processors will not pay more for a nonmember's catfish. And we set a variable term of prices from now through July, where the base price is 70 cents a pound for the whole time. But our board has the right to increase the price a nickle after January 1 or up to a dime. And the method is that we give them 2 weeks' notice. We didn't want to broadcast the market for catfish for the next 7 months. We give them 2 weeks' notice and give our farmers 1 week's notice. That's the price.

In the course of our negotiations on prices, we gave up 2 weeks. We made one price increase January 15 instead of January 1. Everything else was intact.

I sent the revised agreements out to the processors. Now, let me give you the rest of the chronology. In late October, early November, we had said all along, give the second offer, give the third offer, every time we made a change in our master agreement, we gave that change to any other processor that had signed. We were extremely fair and equitable. We would give something to you in your favor that you didn't get at signing. You won't be penalized. You have the right to be given the same situation.

November 20 was our magic date that we were going to sell only to those processors who had master agreements signed on or after November 20. That's what we said all along. The way we initially indicated this to our membership is that the board of directors would get enough processor capacity signed up before we ever bound them to the membership agreement. If for some reason, we had fallen completely on our face and threatened to break the $300-million industry, we would void the whole thing. Trust us. Have a little faith.

Well, Tuesday night, November 14, we had a little parlor meeting to discuss our dilemma. Our dilemma was that Monday morning was our goal date, November 20. And we had signed up, of the 31 U.S. processors, a goose egg. Zero. Nobody had signed. So, rather than having the board of directors make such an important decision, we went back to our full membership in a meeting where we had almost 100 percent attendance and said, "Gentlemen, next Monday is our date. What's your pleasure?" They unanimously said: "Let's stick to our guns as we said in the first place. Those who were signed up on Monday morning we will deliver fish to. Those who were not signed up, we won't." But we kind of amended this. That was not final sign up date. We weren't that stupid. We said we'll initially sell to you in the hope you'll sign up. And if you'll sign up, then we'll put out the final deadline. If you want to be in between now and July you've got to get signed up by this deadline. We stuck to our guns, the word got out pretty fast. The next morning five processors signed agreements. Two days later, we had seven sign. We at that point put out a final deadline of December 15.

I'm not going to elaborate on processor negotiations and all the stories and all the trials. I've forgotten a lot of it but it was very tedious. It was a tough experience, an emotional experience with friends whom I've dealt with in advertising and public relations. I do recall some of the funnier things that happened during that period, some of the ridiculous things that happened. Had we wanted to sue under the Agricultural Fair Practices Act, we could have done it a dozen times. But we were not trying to sue somebody, we were trying get master agreements, to fix our price of fish.

I had one processor come in to the meeting we had in one district and say to the members, "If you sign this master agreement, we will shut down our processing plant and move out of your district. If you don't, we're going to spend $300,000 and expand our plant. We could challenge something like that, but it was not the kind of thing we wanted to do. I had another processor come into a group meeting and pass out a three-page document to the 100 people there and go through the whole thing of what the Catfish Bargaining Association would do to you. One of the things it said that it would do was collect $800,000 in dues to pay the salaries of officers and directors, which was ridiculous. Our whole dues budget was about $200,000. We clearly had provisions in our bylaws that said officer and directors can't receive any salary.

Then the big question came out—and this came from a cooperative—aquaculture was not agriculture, therefore you're not exempt under the Capper-Volstead Act. You are an illegal, antitrust violator, which was ridiculous. You can look at the 1985 Farm Bill. You can argue back and forth, but the main thing making it a completely mute issue was that if we were fisheries, the Fishermen's Cooperative Act of 1934, the mirror-image of the Capper-Volstead Act, applied.

Some lawyer dug back 10 years ago into the history of the organization that we had transformed into a bargaining association. This lawyer was also with a cooperative. He found we were illegally organized because the statute clearly said

we had to organize in Warren County, MS, and we organized in Washington County, MS. We countered with the attorney general's opinion, which we were able to dig up from our Council in Mississippi, that was an exclusion given to this group when it was organized 10 years ago. But the processor said the attorney general was wrong.

These are some of the things that we went through.

The most tedious thing when we dealt with processors — and this isn't the way you do it out West, I've learned — was that we dealt with the cooperative processor exactly like we dealt with the other processors. We made the decision that if you wanted to buy fish from your cooperative member, you've got to sign the membership agreement. I didn't think that was unreasonable since 78 percent of the cooperative's members had signed membership agreements with us, and half of our board of directors. I mean, it wasn't like the guy didn't want to do this. But management didn't think it was such a hot idea. It was a pretty bitter situation.

One thing the cooperative got us to do was to give it exhibit B. This worried everybody on our board. The cooperative would sign the master agreement, only with the provision that we allow them exhibit B, which says they must ratify this by the full membership of the cooperative to absolve their directors who signed membership agreements of any conflict of interest liability. Some of the cooperative's directors, who were my friends, were pretty worried. Well, we weren't too worried, except Mississippi statute states you have to have a two-thirds vote of the total membership to do that. And those directors who had signed membership agreements couldn't vote. So, from an arithmetic standpoint, we had to get all of our votes. You know, it was a pretty scary thing. If we allowed them the right to do this — they're us, we're them, with the understanding of management that there be no attempt to knock us off track or downplay or derail the bargaining association — this was a formality. We agreed to do it just to make sure there was no violation of conflict of interest law.

The cooperative set the meeting 3 weeks later, on the day before my deadline on the 14th. During the week and a half, management held group meetings of 15 to 20 farmers and presented about 70 pages, or a synopsis of 70 pages, with legal opinions, management opinions, and other opinions that were absolutely worthless, and did everything humanly possible to get the membership to vote no. Such a vote would have, in fact, absolved Delta Pride and more or less killed the whole industry. At the same time they were meeting, we were collecting proxies. So when the night came for the vote, we needed 17,400 shares to ratify it. We had more than 20,000 shares in our hands. We passed the vote with about 92-94 percent vote.

So, I'm giving you just a little bit of history. I don't mean to give this in a braggadocious manner but when every vote was counted, we've got only one way to go but down. We'll screw up and it won't be this easy. We had a supply and demand situation. We had the window of opportunity to get the farmers together and get the thing organized. It will never be like this again. We've got to face these guys again in July. One thing we did with all the processors, although we dealt pretty hard on prices and terms, was to absolutely deal fairly, above board, and there has been no misrepresentation of facts. Personality-wise, we've done it right. We've listened. We haven't changed everything they wanted us to. But, we have been absolutely equitable and fair with all. That's essential.

I'm a little proud that in 10 weeks' time, from September 28 to December 15, we put together an organization that has a membership agreement signed with 240 farmers in two States, representing more than 80 percent of the U.S. catfish acreage. We've got master agreements signed with 18 processors in 6 States, that represent 92-93 percent of the U.S. market share.

We have moved the price of catfish from 63 cents a pound to 75 cents a pound. This is about a 20-percent increase, which will represent about $36 million to our growers on an annual basis, for a cost to them in dues of under $200,000. And the good news I'm hearing from the processor marketplace is that they are in a more profitable position today because the price war is ending and the wholesale price is moving up. If they look better today, paying 75 cents than they do paying 63 cents 6 weeks ago, that's a real improvement and the proof of the pudding. If we just put the price up in translation to losses for processors, we've done nothing.

Our board has got to be responsible. We must go from now to July listening to these guys and separate the wheat from the chaff and the smoke from the reality, and go down in prices if we need to, but be responsible to them. But at this point, it looks like bargaining is working.

ATTENDANCE ROSTER

PACIFIC COAST AND NATIONAL BARGAINING CONFERENCE
January 18-20, 1990
Sheraton Harbor Island
San Diego, California

Agricultural Bargaining Council
744 Main Street
Presque Isle, Maine 04769

Jack Ashley

Agricultural Council of California
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Don Gordon

American Farm Bureau Federation
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Park Ridge, Illinois 60068

Scott D. Rawlins

Apricot Producers of California
1064 Woodland Avenue, Suite E
Modesto, California 95351

Gene Bays
Elenor Bays
Lauren Campbell
Betsy Campbell
Ed Maring
Mimi Maring

Atlantic Dairy Cooperative
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Ron Schuler
Laurie Schuler
Rich Hudgins
Jon Murphy
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Janet Little

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Jason Peltier
Stan Hildreth
Bill Johnson
Jim Culbertson
Judy Culbertson
Burton Threlkel
Vanetta Threlkel
Marc Faye
Gerda Faye
Mary Margaret Harp
Vernon Harp
Bill Estrem
Shirley Estrem
Dave Elliot
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Greg Hanson
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John Dillard

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Bill Hanahan
Daryl Knipp

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The agency (1) helps farmers and other rural residents develop cooperatives to obtain supplies and services at lower cost and to get better prices for products they sell; (2) advises rural residents on developing existing resources through cooperative action to enhance rural living; (3) helps cooperatives improve services and operating efficiency; (4) informs members, directors, employees, and the public on how cooperatives work and benefit their members and their communities; and (5) encourages international cooperative programs.

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